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IN THE MATTER OF:)

) Docket No.

DETERMINATION OF CABLE) 14-CRB-0010-CD

ROYALTY FUNDS) (2010-2013)

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6 DETERMINATION OF CABLE) 14-CRB-0010-CD

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9 BEFORE: THE HONORABLE SUZANNE BARNETT

10 THE HONORABLE JESSE M. FEDER

11 THE HONORABLE DAVID R. STRICKLER

12

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23 Reported by: Karen Brynteson, RMR, CRR, FAPR

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1 P R O C E E D I N G S

2 (9:09 a.m.)

3 JUDGE BARNETT: Good morning. Please
4 be seated. We survived the Ides of March and
5 now we are at Saint Patrick's Day eve and it's
6 snowing. What more can we ask for? It's
7 Friday and we're in a hearing.

8 Mr. Olaniran, you're calling a new
9 witness?

10 MR. OLANIRAN: Yes, Your Honor,
11 Program Suppliers call Mr. Howard Horowitz.

12 JUDGE BARNETT: Mr. Horowitz, if you
13 could please stand and raise your right hand.
14 Whereupon--

15 HOWARD HOROWITZ,
16 having been first duly sworn, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. OLANIRAN:

20 Q. Good morning, Mr. Horowitz. Would you
21 please state your full name for the record.

22 A. My name is Howard Horowitz.

23 Q. And would you please provide a brief
24 summary of your educational background.

25 A. I have a Bachelor's degree from NYU, a

1 degree in psychology, and a Master's degree in
2 political science, also from NYU graduate
3 school.

4 Q. And NYU would be New York University?

5 A. New York University in Manhattan.

6 Well, the first degree in the Bronx and second
7 degree in Manhattan.

8 Q. Thank you. And who's your employer?

9 A. Horowitz Associates, Inc., also known
10 as Horowitz Research.

11 Q. And what position do you hold at
12 Horowitz Research?

13 A. I'm the president of Horowitz
14 Research.

15 Q. And what are your duties as president
16 of Horowitz Research?

17 A. I manage the entire operation, which
18 essentially has three elements, research
19 operations, which is design and writing of
20 surveys, the account-facing team that sells our
21 research services, and the finances of the
22 company.

23 Q. And how long has your company been in
24 existence?

25 A. The company, since July 1985. So it

1 would make it almost 33 years.

2 Q. Okay. And could you tell us a little
3 bit about what the company does.

4 A. The company does survey and other
5 forms of primary research for marketing and
6 other operating companies.

7 Q. Okay. And in terms of your personal
8 subject matter expertise, what is that?

9 A. Personal subject matter is, again,
10 surveys and other forms of primary research,
11 for example, focus groups. I'm a focus group
12 moderator. And the where I've done my most
13 work, subject matter-wise, is in the cable
14 television and programming industries.

15 Q. And could you tell us a little bit
16 about how Horowitz Research was launched.

17 A. Horowitz Research was launched
18 following a stint at Opinion Research
19 Corporation, a division of Arthur D. Little, at
20 the time in the early '80s. And I was
21 commissioned during that tenure to conduct what
22 has become known as is NCTA segmentation study,
23 which was basically to prove the value of new
24 cable content in the competitive world with
25 broadcast television; in other words, would

1 consumers pay for new forms of television when
2 their current television services are free?

3 Q. Okay. And you mentioned the acronym
4 NCTA. And what is that?

5 A. That's the National Cable Television
6 Association.

7 Q. Thank you. And in what industries --
8 I know you mentioned, I think, cable industry.

9 A. Yeah.

10 Q. What other industries have you
11 conducted research?

12 A. Well, we have -- our main focus is on
13 the cable and programming and technology
14 industries related to video technology, but
15 we've also done work for many different
16 industries; hospitality, CPG, consumer
17 products, travel, et cetera.

18 Q. And in what -- what types of areas do
19 you do research work?

20 A. We do research in customer
21 satisfaction and service, in marketing. In the
22 case of the cable industry, in subscriber
23 acquisition and retention. In the case of the
24 content industry, in distribution of content.
25 Mostly focused on consumers, but often also

1 surveys of cable operators in terms of what
2 their interest is in carrying channels.

3 Q. And I know that you personally in your
4 company performed survey research. What is the
5 -- could you give us a sense of the full
6 complement of services that your company
7 provides?

8 A. Our company provides survey research
9 services, including design, consulting on
10 what's needed, on analysis and reporting, and
11 on presentation.

12 Q. Okay. And you mentioned working with
13 cable systems. What kind of work have you done
14 with cable systems?

15 A. Cable systems, we've done, again,
16 customer service, marketing, subscriber
17 acquisition, technology adoption.

18 Q. And these are all survey-related work?

19 A. All survey and other forms of primary
20 research like -- like focus groups.

21 Q. Have you done any work for cable
22 networks?

23 A. I've done a lot of work for cable
24 networks.

25 Q. And what kind of work, survey research

1 also?

2 A. Survey research, mostly for their
3 distribution teams, but also a lot for their
4 content development teams.

5 Q. And have you done any work for
6 television broadcast -- broadcast television
7 clients?

8 A.. Yes, I have done work for broadcast
9 clients.

10 Q. And -- and what kind of work did you
11 do for television clients?

12 A. Television viewing, content
13 development, and even positioning in a cable
14 environment that in the past 20 years was new
15 to the broadcast industry.

16 Q. And in terms of cable system operator
17 clients, who are your typical clients that you
18 do survey research work for?

19 A. In terms of cable systems, over the
20 course of 30 years, I think literally, not just
21 virtually, all cable operators have been
22 clients, but including Comcast, Time Warner in
23 its day, Charter, Cox Communications, RCN, and
24 many, many others.

25 Q. With respect to cable networks, what

1 kinds of clients have you had in the cable
2 network industry?

3 A. Again, having done that NCTA
4 segmentation study, our services have been in
5 high demand by distribution teams of almost all
6 -- almost all networks, including AMC, HBO,
7 ESPN, MTV, and I'm now sort of going to now
8 list -- trying to remember the list of all the
9 cable networks in the industry.

10 Q. That's fine. And with regard to
11 broadcast television stations, what broadcast
12 stations have you done work for?

13 A. We've done a lot of work for ABC; a
14 lot of work for NBC; a lot of work for
15 Telemundo, which is now part of NBC; and a lot
16 of work for Univision.

17 Q. And most of the research work that
18 you've done for all these various clients, were
19 you the lead person in all of these
20 engagements?

21 A. I have been the lead person in almost
22 all engagements from the launch of the company.
23 I'm the lead person as head of my company now
24 in the past ten years with a full staff taking
25 intermediate positions running these studies.

1 Q. Okay. And in the survey research over
2 the years that you have been involved in,
3 survey research, could you please describe the
4 range of experience that you personally have
5 had in your involvement with survey research?

6 A. My experience runs the gamut of --
7 from the beginning meeting with clients to
8 develop their objectives, to understand their
9 needs, from writing the proposal, from having
10 been awarded the project, from writing the
11 questionnaire, to then writing reports about
12 the data from the research. And I've even
13 done -- been on an interviewing team actually
14 doing the interviewing.

15 Q. That's actual field work; is that what
16 you mean?

17 A. Yeah.

18 Q. Okay, thank you.

19 And just prior to founding Horowitz
20 Research, what did you do?

21 A. I worked for Opinion Research
22 Corporation and founded what was then called
23 the Cable Video Research Center.

24 Q. Okay. And what is Cablevision --
25 Cable Video Research Center and what were your

1 responsibilities at that --

2 A. The Cable Video Research Center, I was
3 asked to head up -- and, since Opinion Research
4 Corporation, Arthur D. Little had cable
5 television on their strategic list at the time,
6 and they were looking for consultants who had
7 experience in that area, and I was tasked with
8 developing a practice in doing research for
9 cable operators and cable networks.

10 Q. And prior to Cable Video Research
11 Center, where were you?

12 A. I worked at a political consulting
13 company called Dresner, Morris & Tortorello.

14 Q. And what were your responsibilities at
15 Dresner Morris?

16 A. There I was an analyst. Mostly handed
17 cross tabs and asked to write a report about
18 the contents of those cross tabs based on the
19 surveys they had done.

20 Q. Since founding Horowitz Research, how
21 many surveys would you say -- estimate you have
22 been involved in?

23 A. A large number, 20 to 30 a year for 30
24 years. That would be in the high hundreds,
25 surveys.

1 Q. And prior to Horowitz Research, while
2 you were at -- I think it's CVRC, and how many
3 surveys would you estimate?

4 A. Similar number per year. If I was
5 there three years, so 100.

6 Q. Do you have any valuation experience?

7 A. Quite a bit of valuation experience
8 for cable system operators throughout the
9 years.

10 Q. And would you please describe the
11 nature of the -- of your experience.

12 A. Yes. In developing channels and
13 packages of channels and bundles of channels
14 and bundles of services, we were asked -- often
15 asked to come in and help with pricing and
16 valuation work.

17 Q. Okay. And do you have a more detailed
18 information about your experience as part of
19 the report you provided in this proceeding?

20 A. I'm sorry?

21 Q. Do you have -- do you have a more
22 detailed information about the experience,
23 about your experience -- did you produce --
24 strike that.

25 Did you -- did you produce much more

1 information attached to the report that you
2 produced in this proceeding?

3 A. Did I work on the reports that --

4 Q. Did you produce additional information
5 about your background attached to your report
6 in this proceeding?

7 A. There are -- there's information about
8 my background attached to the reports.

9 Q. Okay, thank you.

10 MR. OLANIRAN: Your Honor, I offer
11 Mr. Horowitz as an expert in market research,
12 including survey research, applied market
13 analysis, and valuation in cable and broadcast
14 television programming industries.

15 JUDGE BARNETT: No objection,
16 Mr. Horowitz is so qualified.

17 BY MR. OLANIRAN:

18 Q. Mr. Horowitz, what were you asked to
19 do in this proceeding?

20 A. In these proceedings, I was asked to
21 replicate the methods and procedures of the
22 Bortz 2004-'05 survey. I was asked to evaluate
23 the questionnaire used in those proceedings and
24 make any improvements that seemed called for.

25 I was also asked to evaluate the

1 2010-2013 Bortz questionnaire and survey
2 process.

3 Q. Were you asked to respond to any
4 written reports provided by any witnesses in
5 this proceeding?

6 A. Yes, I was asked to read and respond
7 to reports by other witnesses in this
8 proceeding.

9 Q. Okay. And did you prepare written
10 reports of your findings?

11 A. Yes, I did.

12 Q. Would you please -- you should have a
13 binder in front of you with -- a black binder
14 with a green cover. Do you see that?

15 A. Yes, I do.

16 Q. And would you please turn to
17 Exhibit 6012.

18 A. 60 --

19 Q. -- 12.

20 A. 6012. Okay.

21 Q. Do you see that?

22 A. Yes.

23 Q. Now would you please identify the
24 document?

25 A. Direct testimony of Howard Horowitz

1 dated December 22nd, 2016, corrected April
2 25th, 2017.

3 Q. Would you please turn next to
4 Exhibit 6013.

5 A. I'm there.

6 Q. And would you please identify that
7 document.

8 A. This is rebuttal testimony of Howard
9 Horowitz, September 15th, 2017.

10 Q. And do you have any corrections to
11 either Exhibit 6012 or 6013?

12 A. No.

13 Q. And do you declare Exhibits 6012 and
14 6013 to be true and correct and of your
15 personal knowledge?

16 A. Yes.

17 Q. Thank you. You testified earlier that
18 you prepared a survey for this proceeding, so
19 I'd like to focus on the survey that you
20 prepared for this proceeding. Okay?

21 A. Okay.

22 Q. And just for the sake of convenience,
23 or it's probably well established in this
24 proceeding, I have referred to your survey as
25 the Horowitz survey.

1 A. Okay.

2 Q. So that's your claim to fame in this
3 proceeding, all right? And what was the
4 purpose of your -- of the Horowitz survey?

5 A. The Horowitz survey was to replicate
6 the Bortz methods and procedures and to make
7 improvements to that -- to that survey. And
8 then, of course, field it, get the results.

9 Q. And which Bortz survey served as the
10 basis for your valuation and improvement and
11 then ultimately fielding that survey?

12 A. The 2004-2005 Bortz survey.

13 Q. And what is your general understanding
14 of the purpose of the 2004-2005 Bortz survey?

15 A. My understanding of the purpose of the
16 survey is to assess the relative market value
17 of non-network programming on distant signals.

18 Q. So the Horowitz survey was intended to
19 -- your survey instrument was intended to be
20 similar to the Bortz survey?

21 A. Is to do the same thing.

22 Q. Okay. And did you design the Horowitz
23 survey on your own?

24 A. No, it was not on my own.

25 Q. And who else was involved in the

1 development of the design of the survey?

2 A. Well, first, my senior staff, mostly a
3 woman named in Nuria Riera, our SVP, research
4 operations, and also other consultants.
5 Dr. Frankel was involved.

6 Q. That would be Dr. Martin Frankel?

7 A. Dr. Martin Frankel.

8 Q. Okay.

9 A. Dr. Rubin was involved. Also a woman
10 at the MPAA, Marcia Kessler, I believe was her
11 name.

12 Q. Would that be Dr. Alan Rubin; is that
13 right?

14 A. Yes.

15 Q. Okay. Thank you. So does the
16 Horowitz survey questionnaire design match the
17 '04-'05 Bortz survey questionnaire exactly?

18 A. Not exactly.

19 Q. And what were the differences?

20 A. The differences, Number 1, that we --
21 oh, yes, I think there was a slide that I
22 produced for this.

23 But the first difference was that we
24 had an "other sports" category.

25 Q. Did you say you had a -- could you put

1 up slide 1, please. Thank you.

2 A. "Other sports" program category.

3 Q. Okay.

4 A. We provided a set of different warm-up
5 questions.

6 Q. Okay.

7 A. We provided representative program
8 examples. We had an automated process for
9 customizing questionnaires. We repeatedly
10 reminded our respondents that they were
11 evaluating their -- the actual distant signals
12 on their cable system. And we reminded
13 respondents about WGN's blacked-out,
14 non-compensable programming.

15 JUDGE FEDER: Is there a problem with
16 the system?

17 MS. MACE: Yes. May we have a pause
18 for the moment? We have some screens out on
19 this side of the room over here.

20 JUDGE BARNETT: Is this side okay?
21 All right. Yeah, we'll give you three or four
22 minutes. Excuse us.

23 (A recess was taken at 9:27 a.m.,
24 after which the trial resumed at 9:31 a.m.)

25 JUDGE BARNETT: Please be seated. I'm

1 certain there's no correlation, but our CRB
2 mailbox has been shut down because of spamming
3 from maybe a bot with a domain that ends in
4 .RU.

5 (Laughter.)

6 JUDGE BARNETT: Just saying.

7 Mr. Olaniran?

8 MR. OLANIRAN: Thank you, Your Honor.

9 BY MR. OLANIRAN:

10 Q. Mr. Horowitz, you were just
11 identifying the key differences between the
12 2013 Horowitz survey and the '04-'05 Bortz
13 survey. I don't know if you got the entire
14 list on record, so if we just run down the list
15 one more time and then we can discuss the
16 details of each of them.

17 A. I'm sorry?

18 Q. I said and then we can go through
19 discussion of the details of each of them.

20 A. The key differences are that the
21 Horowitz survey has an "other sports"
22 programming category, has different warm-up
23 questions, provides representative programming
24 examples for each category, provides customized
25 questionnaires, contains repeated reminders to

1 respondents of THE distant signals they are
2 evaluating and, when relevant, remind the
3 respondents regarding WGN's blacked-out
4 programming as non-compensable.

5 Q. And so let's talk about each of these
6 differences. Could you please explain the
7 first bullet, which is the other sports
8 programming, and what exactly is that?

9 A. "Other sports" programming is sports
10 programming like NASCAR, figure skating,
11 professional wrestling, that is in -- belongs
12 in the Program Suppliers category, and not in
13 the JSC category.

14 Q. And what was the purpose of creating
15 an "other sports" programming?

16 A. So that our respondents could
17 distinguish and evaluate separately this
18 content from the live team and professional
19 college sports.

20 Q. And why did you think that distinction
21 was important?

22 A. Because otherwise it's reasonable to
23 conclude that all sports would be put into the
24 JSC category, if not asked to distinguish.

25 Q. And why do you say that?

1 A. Because it's sports, and that's the
2 only place that -- the only place sports was
3 asked about.

4 Q. And let's go to the next question,
5 which is the warm-up question. And what did
6 you -- what is -- what distinguishes your
7 survey from the Bortz survey with regard to the
8 warm-up questions?

9 A. Well, we did our warm-up questions
10 differently. We had three elements in our
11 warm-up question. One was, while including
12 subscriber retention value and acquisition
13 value, we also made allow -- asked a question
14 about the importance for the cable system in
15 general.

16 We asked about, as did Bortz at that
17 time, value for this content for advertising
18 and promotion purposes. And we asked about the
19 importance to their subscribers of each
20 individual program category.

21 Q. Now --

22 A. Bortz did not.

23 Q. I'm sorry. Are you finished?

24 A. Yes.

25 Q. Okay. And as between your -- the

1 Horowitz survey and the '04-'05 Bortz survey,
2 did you introduce completely new warm-up
3 questions or did you carry over some of the
4 warm-up questions from the old Bortz survey?

5 A. We carried over the advertising
6 question from the Bortz survey.

7 Q. Okay. And could you please -- let's
8 go to the next bullet, which is the
9 representative program examples.

10 A. Yes.

11 Q. And why did you add program examples?

12 A. This was to focus respondents and make
13 sure they had a clear understanding of each
14 program category to avoid respondent error.

15 Q. In developing the questionnaire, did
16 you -- in reviewing the '04-'05 Bortz survey
17 and in developing your questionnaire, did you
18 have reason to believe that respondents might
19 be confused as to the program categories?

20 A. Yes, I thought that the program
21 categories, other than live team and college
22 sports, really had no substance, no labeling,
23 no way to know what was included in those,
24 precisely certainly not included in those
25 categories.

1 Q. With regard to the customized
2 questionnaires, what exactly did that -- are
3 you referring to in that regard?

4 A. Well, in that regard, again, we
5 created five categories of respondents or of
6 systems based on the kind of signal carriage
7 that they had. And each one entailed different
8 signals and different categories of
9 programming.

10 And we wanted to be precise and
11 accurate about what was asked of each
12 respondent.

13 Q. Okay. And why did you do that?

14 A. I'm sorry?

15 Q. Why did you create the five categories
16 of -- of programming, I think you said?

17 A. Right, to ensure that respondents had
18 the correct distant signals and program
19 categories in front of them when -- or were
20 asked about the correct ones.

21 Q. When they were being asked questions
22 about the signals that they carried?

23 A. Um-hum.

24 Q. Thank you. You have to say yes or no.
25 You can't say um-hum.

1 A. Oh, I'm sorry.

2 Q. That's okay. You have to be clear on
3 the record. Thank you.

4 And then with regard to the next
5 bullet, which is the repeat reminder, could you
6 please explain what that is.

7 A. Yes, in this survey we made sure that
8 respondents were focused on the task at hand at
9 all points in the survey. And the task at hand
10 was to think about the value of the programming
11 on the distant signals that they carried.

12 And we -- from the introduction to the
13 survey right through every part of the survey,
14 we reminded them of what they were -- what they
15 were doing.

16 Q. And the last bullet, you said,
17 reminded the respondents regarding the WGN's
18 blacked-out programming. And what was that?

19 A. Well, we -- we understood that when
20 dealing with WGN systems, there was a
21 difference in the fact that WGN blacked out
22 some of the programming they offered in, I
23 guess, their local -- I guess it's Chicago
24 market, and provided different programming on
25 the -- so, therefore, we did not want our

1 respondents to value that in the -- as
2 compensable programming. So we reminded them
3 not to value blacked-out WGN content.

4 Q. And you're talking about the WGN
5 content that was on WGNA, the national piece --

6 A. Yes --

7 Q. -- is that right?

8 A. -- WGNA.

9 Q. Thank you. Who were the survey
10 respondents in the Horowitz survey?

11 A. The survey respondents were cable
12 personnel or executives identified and
13 self-identified as responsible for channel
14 carriage decisions in their respective systems.

15 Q. Okay. And so who specifically were
16 you seeking to interview at the cable systems?

17 A. The decisionmaker for carrying these
18 distant signals.

19 Q. Okay. And how did you go about
20 selecting cable systems to interview?

21 A. We were provided the list of -- I
22 think they're called Form 3 cable systems that
23 carried distant signals from Cable Data
24 Corporation. So we got that entire list and
25 used that.

1 And we also got a sample list of 300
2 systems fitting the requirements from --
3 produced by Dr. Martin Frankel.

4 Q. Now, was the sample drawn from the
5 universe --

6 A. From the larger universe, yes.

7 Q. Thank you. And so how did you
8 identify the appropriate individual to
9 interview at the cable system?

10 A. Well, we had a two-step process.
11 Considering developments that we were quite
12 familiar with in the industry, with
13 consolidation and difficulty of locating the
14 executive, we hired a woman named Sue Panzer, a
15 long-time senior cable programming executive,
16 more than 20 years' experience in the business,
17 whose job it was to sell content to these same
18 executives.

19 And she set about the task of
20 identifying the -- doing the initial
21 identification, the initial screening process
22 for the correct executive. She -- when she was
23 satisfied, she turned that name and system over
24 to our field people, and our field people
25 called and re-qualified them.

1 Q. And had you worked with Ms. Panzer
2 before?

3 A. Yes, over many, many years.

4 Q. And how does she -- what did you
5 instruct her to do or what does she do in
6 screening, in doing this initial screening of
7 the potential respondents?

8 A. This was quite an effort on Sue's part
9 to contact the cable operators at the corporate
10 level, she has been dealing with a list of
11 systems, asking the executives she knew, about
12 who was in charge of content for these
13 particular systems.

14 She often got that information
15 directly and often, I presume, went directly to
16 that person because she already knew that that
17 was the correct based on her expertise and
18 knowing who the buyers and decisionmakers are
19 in cable television.

20 Q. And she -- so she started at the top
21 of the organization and they gave her direction
22 as to where to go in terms of the
23 decisionmaker; is that correct?

24 A. Yes, yes, if she didn't already know
25 where to go, which is quite possible in many

1 cases.

2 Q. And after Ms. Panzer completed her
3 screening exercise, what was the next step in
4 the --

5 A. The next step for our interviewers was
6 to call -- she provided the contact
7 information. And we called and attempted to
8 get an interview with that person.

9 Q. Okay.

10 A. And qualify them, again, on the same
11 criteria: Are you the decisionmaker for the
12 particular system we were interested?

13 Q. Do you mean re-qualify them?

14 A. Yes, re-qualify.

15 Q. Thank you. Now let's talk about the
16 survey instrument itself. Would you please go
17 to page 23. I'm sorry, Appendix A of
18 Exhibit 6012, page 23.

19 A. All right, I'm on page 23 of 6012.

20 Q. And just take a couple of seconds just
21 to peruse that appendix before we start talking
22 about it.

23 A. Okay.

24 Q. Are you ready?

25 A. Yes, I think.

1 Q. And can you just -- would you please
2 identify that document for the record.

3 A. This is the 2013 cable operator
4 questionnaire, Horowitz survey.

5 Q. And did you use this question for all
6 royalty years at issue in this proceeding?

7 A. There was a different questionnaire
8 for each year, 2010, '11, '12.

9 Q. When you say "different," do you mean
10 different substantively or different as to the
11 unique information pertaining to each year?

12 A. The template was exactly the same.

13 Q. Okay.

14 A. The distant signals and the content
15 provided by those signals changed from year to
16 year or potentially changed from year to year.

17 Q. Okay. And -- but the substance of the
18 questionnaire from year to year remained the
19 same?

20 A. Yes, yes.

21 Q. And did you use hard copies of
22 questionnaires?

23 A. No, we did not use hard copy of the
24 questionnaires.

25 Q. And why didn't you?

1 A. Electronically programmed
2 questionnaires are, in almost all cases, better
3 in every respect in terms of accuracy, in terms
4 of exactly the right questionnaire being
5 applied to the right respondent.

6 Q. And how exactly did you use an
7 electronic questionnaire?

8 A. The information we got with the sample
9 on the categories of -- on the sample that we
10 received from CDC and from Dr. Frankel, we've
11 programmed into a computer, and so each -- each
12 system would call up the correct distant
13 signals, the correct program examples, and the
14 correct questionnaire relevant to that system.

15 Q. And you talked about organization of
16 carriage groups earlier.

17 A. Yes.

18 Q. Is that what you're referring to here?

19 A. That -- we did that as well for
20 accuracy and efficiency, based on the
21 differences that would be -- the differences in
22 the questionnaire that would be generated for
23 each group.

24 Q. And just describe very briefly from
25 the interviewer's perspective, once you

1 identified a respondent at a cable system and
2 the interviewer is about to make that phone
3 call or communicate with a respondent, take us
4 through very briefly what that process is from
5 the interviewer's perspective with regard to
6 this electronic questionnaire.

7 A. From the interviewer's perspective,
8 they knew the call that they were going to
9 make. I don't know if the key was a phone
10 number or the key was a system ID, probably the
11 system ID. They would enter that, and the
12 correct questionnaire would appear on their
13 screen.

14 Q. Okay. So at the moment the phone call
15 is going through, there's a questionnaire
16 pertaining specifically to that particular
17 respondent?

18 A. Yes.

19 Q. Would that questionnaire also have
20 information about the carriage information
21 related to that particular system?

22 A. Yes.

23 Q. Okay. Now, let's walk through
24 Appendix A. Appendix A -- okay.

25 Let's start with the first -- page 23,

1 and can you please describe the information on
2 the first page.

3 A. Information on the first page?

4 Q. On the first page of page 23.

5 A. Of page 23.

6 Q. Yes.

7 A. There's a top half of this page. That
8 would be entered or populated by the
9 interviewer with information about the process
10 that they were doing to have a record for all
11 concerned.

12 Q. Okay.

13 A. The bottom half starts the actual
14 script with a greeting to the respondent.

15 Q. And what's the first question?

16 A. The first question is on page 24.

17 JUDGE STRICKLER: Before you get into
18 the first question, sir, a question for you.

19 You -- in your survey, you offer an
20 honorarium to the participant.

21 THE WITNESS: Yes.

22 JUDGE STRICKLER: That's different
23 than the Bortz survey, correct?

24 THE WITNESS: I don't know what
25 Bortz's honorarium was or --

1 JUDGE STRICKLER: If any?

2 THE WITNESS: If any. That's correct.

3 JUDGE STRICKLER: Why do you include
4 an honorarium?

5 THE WITNESS: We feel that that will
6 generate high response rates and quality,
7 interested survey respondents, and it's
8 appropriate in this -- in these cases.

9 JUDGE STRICKLER: Is there ever a
10 downside to offering an honorarium?

11 THE WITNESS: Ever, yes. We avoid
12 offering an honorariums related to the topic at
13 hand, like we wouldn't offer a free movie to a
14 respondent doing this survey. So that's an
15 instance where we wouldn't.

16 The other is if we thought that it
17 would introduce response bias because only
18 people who got paid would do the survey. In
19 this case, it may be that only people who would
20 get paid would do the survey, but it's a
21 homogeneous group of executives who are
22 qualified to do this. So we think just a
23 straightforward compensation would get them to
24 say yes to do -- to spend 15 minutes with us.

25 JUDGE STRICKLER: So it's basically to

1 increase the participation rate?

2 THE WITNESS: That's correct.

3 JUDGE STRICKLER: Thank you.

4 JUDGE FEDER: What was your response
5 rate?

6 THE WITNESS: Our response rate,
7 across the years, was around 60 percent.

8 JUDGE FEDER: And how does that
9 compare with the Bortz response rate?

10 THE WITNESS: You know, I don't know
11 offhand, but I think Bortz also had high
12 response rates in theirs.

13 JUDGE FEDER: Thank you.

14 BY MR. OLANIRAN:

15 Q. You just directed me to page 24.

16 A. Yes.

17 Q. And I was asking what the first
18 question was on the --

19 A. This is the qualifying question. Are
20 you the person at your cable system most
21 responsible for programming decisions made by
22 your system in 2013, in this case.

23 Q. And this is the re-qualifying question
24 you had mentioned earlier?

25 A. Yes.

1 Q. And the second question --

2 A. The second question -- I'm sorry.

3 Q. Go ahead. And what is the second
4 question?

5 A. The second question provides the first
6 conveyance of the distant signals that we are
7 talking about in the survey and then
8 immediately asks the respondent an
9 introductory, a warm-up question related to
10 value in some sense.

11 We're starting to focus the respondent
12 on what they're doing, on valuing the content
13 on these signals. That's in question -- the
14 end of Question 2, carries on to Question 3 and
15 4, the frame of reference there being value for
16 advertising, and then carries on to question 5,
17 the frame of reference being importance to
18 subscribers.

19 Q. Okay. I want to ask you, now, after
20 question -- on page 25, right after Question 4,
21 you have in bold one line with lists for group
22 D; group A -- only ask item H. Do you see
23 that?

24 A. Yes.

25 Q. Group B -- only ask item G. What is

1 the significance of those instructions, I
2 guess?

3 A. Those are instructions that, again,
4 were pre-programmed, so they were -- all
5 automatically appeared for the interviewer.
6 They didn't see these instructions. These are
7 computer instructions.

8 And that if group A might have been
9 PBS-only and group B Canadian-only systems, we
10 only asked about using that content, not about
11 the others that were irrelevant to the system.

12 Q. Okay. So is it fair to say that
13 Appendix A is a composite of all of the
14 questions that would be asked?

15 A. Yes, this is a composite of all the
16 content and script that would appear across all
17 the surveys. And the computer sorted all this
18 complicated information after each, into a
19 coherent survey and screens for the
20 interviewer.

21 Q. So this is mainly to make sure that
22 when the interviewer is asking a question, the
23 correct information about the system that's
24 being interviewed pops up on the screen?

25 A. Yes, the interviewer did not have to

1 stop and only ask A. The only thing that
2 appeared was -- was H for that.

3 Q. I see. And so in between page 25 and
4 28, are all of the different scenarios which
5 would pop up --

6 A. Yes.

7 Q. -- on the screen for the interviewer;
8 is that right?

9 A. That's correct.

10 Q. Okay. And you mentioned Question 5.
11 That was the last. And Question 5 is, I think
12 you said, another warm-up question?

13 A. Yes.

14 Q. And what was the purpose of Question
15 5?

16 A. This was for respondents to be
17 thinking about value or importance to
18 subscribers.

19 Q. And, again, between page 29 and, I
20 think, 32, the top of 32, are, again, all the
21 various options with regard to the
22 questionnaire; is that right?

23 A. Yes, through to the bottom of 32.
24 That is correct.

25 Q. And now let's go to -- now we get to

1 page 32. I think the next question is 6.

2 A. Yes.

3 Q. And what is Question 6?

4 A. Question 6 is, finally, the constant
5 sum question, now being asked in the context of
6 all the warm-up questions.

7 Q. Okay. Could you please tell us about
8 your warm-up question.

9 A. I'm sorry, the warm-up?

10 Q. I mean, I'm sorry, the constant sum
11 question.

12 A. The constant sum question asked
13 directly that we want them to estimate the
14 relative value to your cable system of each
15 type of programming. We put them through a
16 rigorous exercise, first to write down all the
17 categories and then to -- the next section was
18 to look at all the categories and provide their
19 allocation of relative value.

20 The frame of reference was value to
21 your cable system, and then we define that
22 frame of reference as value to your -- for
23 subscribers' acquisition and retention, value
24 for advertising and promotion, and any other
25 form of value to your cable system.

1 Having given that, those instructions,
2 they were -- they did their exercise. And
3 then, finally, at the end, we asked them to
4 review their exercise and make sure they didn't
5 want to do any changes.

6 Q. And so from page 33 all the way
7 through the top of 36, again, the different
8 options of the questionnaires depending on
9 which cable system you're dealing with; is that
10 right?

11 A. Yes.

12 Q. And then the constant sum question
13 continues at the top of page 6. Do you see
14 that?

15 A. Top of page --

16 Q. 36, I'm sorry.

17 A. Yes.

18 Q. Okay. And then if you go to the
19 middle of the page 36, and that's additional
20 language with -- is that also -- that's also
21 connected to the constant sum question?

22 A. Yes, the additional language in
23 formulating your percentage, think about all
24 the factors that we have been discussing, and
25 then -- and then conveying what we had been

1 discussing, yes.

2 Q. Okay. And if you go on to page 40 of
3 Appendix A, are you there?

4 A. Yes, I am.

5 Q. Is that where you conclude your
6 constant sum question?

7 A. Yes, this is where the constant sum
8 question and the survey concludes.

9 Q. And what are you instructing the
10 respondents to do in that portion of the
11 constant sum question?

12 A. We asked them to review their work and
13 make any changes and asked them -- we reviewed
14 their work and asked them for any changes they
15 wanted to make.

16 Q. Okay. Thank you.

17 Are you familiar with the term "sample
18 dispositions"?

19 A. Yes.

20 Q. And what is that?

21 A. That is, throughout the process and in
22 the end of the survey process, the status of
23 our interviewing in terms of -- in terms of the
24 process completes, refusals, no answers,
25 exactly what it was -- what's been happening

1 with the sample.

2 Q. Okay. And did you present your sample
3 dispositions in your testimony?

4 A. Yes, I did.

5 Q. Okay. Could we take a look at that?

6 A. All right. Is there a page that you
7 can refer me to?

8 Q. Would you look at page 12 of
9 Exhibit 6012.

10 A. Page 12 of 6012. Yes.

11 Q. And could you please tell us what's in
12 section E titled, surprisingly, Sample
13 Disposition.

14 A. Sample disposition. Each year the
15 final sample disposition is presented in this
16 table. In reverse order, the number of systems
17 in -- the first row, the number of systems that
18 we actually completed interviewing for, out of
19 the total of 300 we were presented by
20 Dr. Frankel, and the number of executives that
21 we interviewed in order to get the information
22 on those 200 systems.

23 And that's presented for each year.

24 Q. Okay. And so for 2013, you had 200
25 responses from --

1 A. 200 systems were covered in interviews
2 with 38 executives.

3 Q. And 228 in 2012 --

4 A. Correct.

5 Q. -- with 42 executives?

6 A. Yes.

7 Q. And 182 in 2011 with 49 executives?

8 A. Yes.

9 Q. And 123 responses from 34 executives;
10 is that right?

11 A. Yes.

12 Q. And on average, over the four years,
13 you had about 183 responses out of
14 approximately 41 executives; is that right?

15 A. Yes.

16 Q. Okay. So, in your opinion, does the
17 Horowitz survey sample disposition for the 2010
18 through 2013 period meet generally accepted
19 survey standards?

20 A. Yes, these are generally accepted
21 standards or exceed, actually, generally
22 accepted standards.

23 Q. Okay. And do you also present the
24 results of the survey, the overall results of
25 the survey, in your testimony?

1 A. Yes.

2 Q. And would you please turn to page 16
3 of your survey.

4 A. Um-hum.

5 Q. Of your report, rather.

6 A. Yes, I'm there.

7 Q. Are you there?

8 A. Yes.

9 Q. Okay. And there's a chart 3.2. Do
10 you see that?

11 A. I see chart 3.2.

12 Q. And could you please describe what
13 chart 3.2 is.

14 A. 3.2 are the weighted results of our
15 survey. And in each row, for each column is
16 the royalty year. And each row is the percent
17 of value allocated by the respondents to each
18 category of programming.

19 So the first row, news and community
20 events in 2013, received an allocation of
21 9.54 percent.

22 Q. And if we just looked at all the
23 different rows, the first row is news and
24 community events, as you just mentioned. There
25 you have syndicated series; is that correct?

1 A. Yes.

2 Q. Movies?

3 A. Yes.

4 Q. And live coverage of professional and
5 college team sports?

6 A. Yes.

7 Q. Then you have "other sports"
8 programming, right?

9 A. Yes.

10 Q. Now, is this the "other sports"
11 programming that you talked about as one of the
12 differences between the '04-'05 Bortz and your
13 survey?

14 A. Yes.

15 Q. Okay. And then you have devotional
16 programming, programming broadcasts on public
17 broadcasting stations, and programming
18 broadcast on Canadian stations.

19 Do you see all that?

20 A. Yes.

21 Q. Okay. And what were the bottom-line
22 results for Program Suppliers for these years?

23 A. Program Suppliers' row is the total of
24 the allocation for syndicated series, movies,
25 and other sports programming.

1 Q. Okay. And could you please read the
2 numbers for 2010 through '13.

3 A. Yes, 2010 is 44.20 percent. 2011 is
4 39.79 percent. 2012, 37.13 percent. And 2013,
5 36.05 percent.

6 Q. Thank you.

7 JUDGE BARNETT: Before we leave this
8 table, Mr. Horowitz, Canadian programs are only
9 permitted to be rebroadcast, at least under
10 this compulsory license, within 150 miles of
11 the border, the Canadian border.

12 Did you do any adjustment to the
13 numbers -- I mean, is this .35 percent on a
14 national basis, and did you do anything to
15 adjust for the fact that those programs were
16 unavailable in the country outside that
17 150-mile zone?

18 THE WITNESS: We did not make any
19 adjustment. These were included in the sample,
20 I would presume, because they were within 150
21 miles of Canadian border. And if that's the
22 only place that they can be shown, then that's
23 how they're represented in this mix of cable
24 systems.

25 JUDGE BARNETT: So you didn't ask a

1 station in St. Louis or Louisiana about
2 Canadian programming, presumably because they
3 were not permitted to carry Canadian
4 programming?

5 THE WITNESS: We did not.

6 JUDGE BARNETT: Okay. Thank you.

7 BY MR. OLANIRAN:

8 Q. And just to clarify your responses
9 again, you received a sample from Dr. Frankel?

10 A. Yes.

11 Q. As to the cable systems that were in
12 the sample?

13 A. Yes.

14 Q. And the cable system, when you
15 received the information, already had the
16 complement of signals that they carried?

17 A. Yes.

18 Q. Okay. And you just simply followed --
19 you went ahead with this survey based on
20 whatever information was on the --

21 A. Yes.

22 Q. -- on the questionnaire?

23 A. Yes.

24 Q. I mean, I'm sorry, whatever
25 information you were provided with as to the

1 complement of signals being carried by the
2 cable system?

3 A. Yes.

4 Q. Okay. But you also, in instances
5 where Canadians -- when the system was carrying
6 only Canadian signals or Public Television
7 signals or a combination of Canadian and Public
8 Television signals, did you also interview
9 those systems?

10 A. Yes.

11 JUDGE STRICKLER: Excuse me, counsel.
12 I have a question for you. I know you
13 testified before that your purpose was to
14 replicate the Bortz survey and make whatever
15 improvements you thought were necessary.

16 I'm looking at the constant sum
17 question, in particular, on page 36 of your
18 written direct testimony counsel pointed you to
19 earlier. So let me know when you're there.

20 THE WITNESS: I'm there.

21 JUDGE STRICKLER: By way of example, I
22 guess it's the second full paragraph, you
23 write, and this is the survey question,
24 "Considering the value of each type of
25 programming to your cable system," do you see

1 that? This is on the one with bold; it says,
2 "Do not read to PBS only."

3 THE WITNESS: Yes.

4 JUDGE STRICKLER: Okay. That's just
5 to orient you to the question. And it says,
6 "Considering the value of each type of
7 programming to your cable system, what
8 percentage, if any, of the fixed dollar amount
9 would you allocate for each type of
10 programming?"

11 And when I look at the Bortz survey --
12 and I'm looking -- just so the record is clear,
13 it's -- Exhibit 6020 is one of the examples
14 that we have of it -- it says in a similar
15 question, "Assume your system spent a fixed
16 dollar amount in 2010 to acquire all the
17 non-network programming actually broadcast" --
18 I'm sorry, let me get to the next sentence,
19 that's what I really wanted. It says, "What
20 percentage, if any, of the fixed dollar amount
21 would your system have spent for each category
22 of programming?"

23 So the Bortz survey uses the word
24 "system." And you say, what percentage, if
25 any, of the fixed dollar amount would you

1 allocate?

2 THE WITNESS: Yes.

3 JUDGE STRICKLER: Since your purpose
4 was to replicate the Bortz survey and then also
5 make whatever improvements you thought were
6 appropriate, did you think it was appropriate
7 and an improvement to change the word "system"
8 to the word "you"?

9 A. I don't recall the thought process in
10 making that change, but these -- this is the
11 decisionmaker. So we asked what they would do,
12 what would you allocate. I don't see the point
13 in referencing the system in doing the
14 allocation. They're the ones doing it.

15 So that -- it just sort of was natural
16 to me, talking to you now. I don't remember
17 the process.

18 JUDGE STRICKLER: You don't remember
19 it being a conscious decision, by way of
20 improvement or otherwise, to change the word
21 "system" to the word "you."

22 THE WITNESS: No, I do not remember,
23 but I do think it's an improvement. That's who
24 we're talking to. It's how you would allocate.
25 Otherwise, this is a third-party guess as to

1 somebody else would be making the decision,
2 which is not supposed to be happening.

3 JUDGE STRICKLER: Thank you.

4 BY MR. OLANIRAN:

5 Q. And I want to turn to your written
6 rebuttal testimony. And I think you mentioned
7 that you also submitted a rebuttal testimony in
8 this proceeding; is that right?

9 A. Yes.

10 Q. Okay. And just at a very high level,
11 what were you asked to do for the purposes of
12 your written rebuttal testimony?

13 A. I was asked to compare the 2010-2013
14 Bortz survey to the 2004-2005 Bortz survey.
15 And I was also asked to compare the Horowitz
16 survey to the 2010-2013 Bortz survey.

17 Q. And so what was the purpose of
18 comparing the '04-'05 Bortz to the '10-'13
19 Bortz?

20 A. The purpose in comparing -- in the
21 testimony of the Joint Sports Claimants, that
22 they were saying how this new version improved
23 over the 2004-2005, and I was asked to evaluate
24 those improvements or non-improvements.

25 Q. And so let's discuss the specific

1 improvements or not so improvements, as you put
2 it.

3 And do you have a summary of the
4 changes that were made for -- between the
5 '04-'05 Bortz and the 2010 through '13 Bortz?

6 A. Yes, I did produce a summary.

7 Q. Okay. We have a slide. Okay.

8 Could you first identify your
9 improvements and then let's talk in detail
10 about these?

11 A. As indicated on this slide, changes to
12 the 2013 -- 2010-'13 Bortz survey included
13 provision of a written WGN programming summary
14 for WGN-only systems, a limit on the number of
15 distant signals included in the questionnaire,
16 revised introductory questions, and a revised
17 constant sum question.

18 Q. And with regard to the first item,
19 which is the provision of WGN programming
20 summaries for WGN-only systems, could you
21 please explain what that change was, from
22 '04-'05 to '10 through '13 Bortz?

23 A. Well, in '04-'05, Bortz did not
24 provide any programming examples and has
25 indicated that they don't think any -- asking

1 programming examples is appropriate.

2 And in this case, they decided it was
3 necessary to provide programming examples.

4 Q. Okay. Ms. Budron, would you please
5 put up Exhibit 1001. I was hoping we didn't
6 have another incident.

7 And would you please go to page C-5.
8 Are you there?

9 A. I see it.

10 Q. Okay. Would you please review that
11 for a second.

12 A. I'm sorry?

13 Q. Would you please review that, and then
14 I have some questions about that.

15 A. Okay.

16 Q. Now, is this the program summary to
17 which you were referring?

18 A. This is the program summary for 2010
19 that I was referring to.

20 Q. And this is the WGN 2010 programming
21 summary; is that correct?

22 A. Yes.

23 Q. Okay.

24 A. WGN America.

25 Q. And could you please describe briefly

1 what the summary is.

2 A. The summary lists the program
3 categories and provides examples under each
4 category, indicates the volume, how many hours
5 were shown, how many programs, and with
6 commentary about when and how they were shown.

7 Q. And how was this summary used in
8 conjunction with the Bortz survey?

9 A. I understand it was sent to or handed
10 to respondents to the survey to look at while
11 they were doing their value allocation.

12 Q. And do you understand why this change
13 was made by Bortz?

14 A. As I understand it, they were worried
15 that there would be -- I don't know if it's
16 category confusion, but compensability
17 confusion on the part of the respondents and
18 felt the need to provide examples to keep them
19 from valuing anything that was not compensable.

20 I think they were particularly
21 concerned about Program Supplier content.

22 Q. And do you agree that using this --
23 using the WGN program summary for WGN-only
24 systems was an improvement to the '10 through
25 '13 Bortz survey?

1 A. The provision of this information was
2 not an improvement over the provision of no
3 information in this particular case.

4 Q. And why do you say that?

5 A. Well, it is -- it does not provide the
6 same kind of branded content example for
7 Program Supplier categories as does for live
8 professional team sports, which always means
9 what it says, in this case Cubs baseball, White
10 Sox baseball, Bulls baseball.

11 Q. And as compared to Program
12 Suppliers --

13 A. Particularly in the movie section,
14 there are no -- no product offered.

15 JUDGE STRICKLER: How should it have
16 been written in terms of describing product
17 offered for the Program Suppliers, movie
18 subsection?

19 THE WITNESS: What movies is it that
20 were shown?

21 JUDGE STRICKLER: They presumably have
22 a lot of movies.

23 THE WITNESS: Sure.

24 JUDGE STRICKLER: Would you suggest
25 they list all the movies?

1 THE WITNESS: No, I wouldn't suggest
2 that, but a representative sample of the
3 movies.

4 JUDGE STRICKLER: Which you, in fact,
5 did. In your survey, you did a -- you provided
6 examples of movies, right?

7 THE WITNESS: Yes, we did, in all
8 category cases.

9 JUDGE STRICKLER: How did you decide
10 which movies to provide by way of example?

11 THE WITNESS: All of the content that
12 fit in the categories was provided to us by the
13 MPAA.

14 JUDGE STRICKLER: But you only used
15 certain examples. Did the MPAA provide you
16 with the examples or did they provide you with
17 a list of all the movies and then you -- from
18 that list, you culled the ones that you used as
19 examples?

20 THE WITNESS: They provided us the
21 examples.

22 JUDGE STRICKLER: Okay. So you don't
23 know whether the examples they gave were movies
24 that were highly rated in the theaters, highly
25 rated in television compared to other, you

1 know, box office busts or less -- less watched
2 programs when they were transmitted on local
3 stations?

4 THE WITNESS: We had asked them to
5 submit movies that were representative of what
6 was carried on distant signals.

7 JUDGE STRICKLER: So you didn't know
8 independently whether those movies were highly
9 rated on television, highly rated in the
10 theaters, before they were rebroadcast on
11 distantly retransmitted stations; you just took
12 the ones they gave you?

13 THE WITNESS: That is correct. We did
14 not know.

15 JUDGE STRICKLER: Thank you.

16 BY MR. OLANIRAN:

17 Q. And let's go back to the slide which
18 had the list of changes. Okay. The next
19 bullet on that slide is the limited number of
20 distant signals to a maximum of eight.

21 Could you please explain what that
22 change was in the Bortz survey?

23 A. For 2010 to 2013, Bortz decided to not
24 ask their respondents for -- to evaluate, to
25 include in the allocation of value, more than

1 eight distant signals, even if the system
2 carried more than eight.

3 Q. And what is your understanding of the
4 reason why Bortz did that?

5 A. Because of consolidation in the
6 industry and systems combining, now the
7 exercise was more extensive, and there were
8 more channels to cover and seemed to decide
9 that the respondents couldn't do that.

10 Q. And do you agree that limiting the
11 number of distant signals for cable subscribers
12 to be interviewed was an improvement to the
13 2010-2013 Bortz survey?

14 A. It was not an improvement.

15 Q. And why do you say that?

16 A. It simply left out relevant content on
17 the system. I don't see how they could not be
18 included in the allocation of value, unless
19 we're questioning whether these respondents can
20 actually do the exercise that they were asked
21 to perform.

22 Q. What do you mean by unless we conclude
23 that the respondents were not capable of
24 performing the exercises they're being asked to
25 perform?

1 A. Meaning that they need to -- our
2 respondents, qualified as being a
3 decisionmaker, needed to allocate value across
4 relevant content. So there's no -- other than
5 the excuse that they can't do it, there's no --
6 there's no justification for cutting off that
7 content.

8 Q. Thank you. And the next bullet is the
9 revised introductory questions. And could you
10 please explain what you mean by that?

11 A. Bortz 2004-2005 had, I believe, two
12 introductory questions; one focused on
13 subscriber value and one about advertising.
14 And they changed those in the 2010-2013 survey.

15 Q. Ms. Budron, could we go to
16 Exhibit 1001 again, page B-2. And let's scroll
17 down, I guess, to page B-3. Okay.

18 And, Mr. Horowitz, let me direct your
19 attention to page -- are you at page B-3?

20 A. Yes, I am.

21 Q. And are you at Question 2?

22 A. Yes, I am.

23 Q. The Question 2b, is that one of the
24 introductory questions you were referring to?

25 A. Yes.

1 Q. Okay. And let's scroll down to page
2 B-4.

3 A. Um-hum.

4 Q. Have you had a chance to review that?

5 A. Yes.

6 Q. And is that the other introductory
7 questions you were referring to?

8 A. Yes.

9 Q. These are the Bortz '10 through '13
10 warm-up questions --

11 A. Yes.

12 Q. -- that you --

13 A. Um-hum.

14 Q. Okay. And do you agree that the
15 revisions to the warm-up questions for the '10
16 through '13 Bortz survey were an improvement to
17 that survey?

18 A. No, I do not think that they were
19 improvements.

20 Q. Why do you say that?

21 A. They completely left the notion of
22 subscriber value.

23 Q. What do you mean by that?

24 A. There's no questions about how -- this
25 is about expense, Question Number 3. And no

1 question about value to subscriber acquisition
2 and retention. And it's actually -- these
3 introductory questions are actually leading the
4 respondent down the wrong path to evaluate
5 expense as opposed to value.

6 Q. And what do you mean by the wrong
7 path?

8 A. Well, if we're evaluating -- we're
9 allocating value, these questions are about
10 expense, how much it would have cost them to
11 buy this product.

12 Q. And you don't believe expense and
13 value are the same concepts?

14 A. Expense and value are not the same
15 concept.

16 JUDGE STRICKLER: Do you believe
17 they're related in any way?

18 THE WITNESS: They're related
19 sometimes as opposites, but they're related.
20 The more expensive it is, the less value it
21 could have. But they're related in that sense
22 based on a particular product that we're
23 talking about.

24 JUDGE STRICKLER: Thank you.

25 BY MR. OLANIRAN:

1 Q. And what about -- scroll back to
2 Question 2b. I'll leave the joke, this time.

3 A. Yes, so this is -- again, this does
4 relate to value. And we didn't use ranking.
5 We used scales. They used ranking, legitimate
6 option, and once again, though, here too,
7 there's no reference to subscribers anymore.
8 They dropped subscribers from this changed
9 importance question and now relate to some
10 undefined cable system.

11 Q. And why was it a concern for you that
12 they dropped the reference to subscribers?

13 A. This -- one of the main valuation
14 factors has been subscriber acquisition and
15 retention, throughout our experience in this
16 proceeding, going back to even Bortz in
17 2004-2005, and it seems to have dropped
18 completely out of this questionnaire or this
19 series of series from 2010-2013.

20 Q. Let's go back to -- I think the last
21 bullet on this slide was the revised constant
22 sum question.

23 A. Yes.

24 Q. And what was your concern with regard
25 to the constant sum question?

1 A. A couple of concerns.

2 Q. Actually, can we go back to that
3 slide? Sorry. And go to the constant sum
4 question. I meant the Exhibit 1001, Appendix
5 B. Let's go to B-5. Thank you.

6 And this is the -- this is Question 4a
7 in the Bortz '10 through '13 survey. Is this
8 the constant sum question you were referring
9 to?

10 A. Yes.

11 Q. And what is your concern with regard
12 to the constant sum question, the -- the new
13 constant sum question?

14 A. Yeah, the new constant sum question.
15 A couple of things, maybe even three things,
16 about this question that were particularly
17 troubling. One, again, is it asks about
18 relative value to your cable system. And
19 never, not in the introductory questions or any
20 place else, has value to cable systems been
21 defined and what those factors are.

22 More importantly, the introduction to
23 the question to estimate relative value is not
24 consistent with the actual question that was
25 asked. Once again, in the same question, they

1 first asked about relative value. And now they
2 ask about spending, assuming your system spent
3 a fixed dollar amount. So it's inconsistent.

4 Secondly, we're talking about channels
5 packaged and content packaged and carried on
6 these distant signals, and we have never been
7 talking about disaggregated content that these
8 particular executives don't -- aren't involved
9 in. So, again, the inconsistency is particular
10 outstanding between value and expense, same
11 question.

12 Q. And -- and do you understand why Bortz
13 says that the change was made to the constant
14 sum question?

15 A. Well, the -- I think the main reason
16 that I recall is that they wanted to broaden
17 the definition of value. I assume that
18 translated to them to call it cable system,
19 value to the cable system.

20 But it's not a meaningful broadening
21 of value. It's anything fits in that. So
22 there's no definition of what the frame of
23 reference is for the respondent.

24 Q. Okay. Does this constant sum question
25 make any reference to subscribers, attraction

1 and retention of subscribers?

2 A. It makes no reference to -- yes, it
3 does not make any reference to subscriber
4 retention and acquisition.

5 Q. Is that also problematic in your view?

6 A. It's problematic in my view. It's
7 what we've been doing and Bortz did originally.
8 And now it has been dropped completely. And as
9 opposed to expanding upon subscriber
10 acquisition and retention, it simply dropped
11 subscriber acquisition and retention.

12 Q. And my last question on this, in the
13 last paragraph of the constant sum question, it
14 reads, "What percentage, if any, of the fixed
15 dollar amount would your system have spent."

16 As compared to your constant sum
17 question, what is your opinion in the
18 difference -- in the difference between yours
19 and this question?

20 A. Our question consistently and actually
21 comprehensively, since we've filled in the
22 definition of what value means, and asked them
23 to allocate value across the different
24 programming categories.

25 This is even inconsistent with the

1 introductory expense question, asking them to
2 say how much they would have spent. I don't
3 get the connection in terms of value, what they
4 know about what they would have spent to get
5 these -- to get these channels.

6 Q. I mean, inconsistency between this
7 question and what other question?

8 A. In their -- even their introductory
9 question about expense.

10 Q. I see. Now let's now turn to a
11 discussion -- the comparison between the 2010
12 Bortz and the 2010 Horowitz. I think you
13 already identified the changes to -- the
14 Horowitz survey made to the '04-'05 and then
15 the changes that Bortz made to '04-'05 to
16 create the 2010 through '13, right?

17 And I think you -- did you have a
18 summary of the key differences between the
19 '10-'13 Bortz and the '10-'13 Horowitz?

20 A. Yes.

21 Q. Could you please put that up, please.
22 Thank you.

23 Would you please identify all the
24 differences between the two surveys and then we
25 can talk about them in detail.

1 A. Yes, just reading down the list, once
2 again, the "other sports" programming category,
3 different warm-up questions focused on value,
4 representative program examples to define the
5 categories. We included and covered systems
6 that carry PTV-only or Canadian-only distant
7 signals. We have a better constant sum
8 question focused on allocating value and with
9 defined value.

10 We, once again, focus the respondents
11 on the actual distant signal carriage on many
12 points in the questionnaire in doing our
13 exercise. We reminded respondents about WGN's
14 blacked-out programming that is
15 non-compensable. And consistently throughout
16 the questionnaire from the introductory
17 paragraphs right through the introductory
18 questions and the constant sum question, what
19 they were doing in a consistent way, subscriber
20 value and consistent instructions.

21 JUDGE STRICKLER: I have a question
22 for you on the first bullet point, the "other
23 sports" program category. You listed examples.

24 Did you -- did you and your
25 organization identify those other sports or

1 were those given to you by Program Suppliers?

2 THE WITNESS: They were given to us by
3 Program Suppliers.

4 JUDGE STRICKLER: Thank you.

5 BY MR. OLANIRAN:

6 Q. Now, you've talked about most of this,
7 so I don't want you to repeat your testimony,
8 but I want to focus on, I think, a couple of
9 those.

10 The fourth bullet, which includes
11 cable systems carrying PTV-only and/or
12 Canadian-only distant signals, why did you
13 survey those systems?

14 A. We surveyed those systems as a
15 legitimate part of the sample universe of Form
16 3 cable systems.

17 Q. Did you believe that they should have
18 been sampled -- they should have been
19 interviewed because they were in the sample?

20 A. I believed they should have been in
21 the sample and counted as a -- as valued in
22 that -- in those systems.

23 Q. And with regard to the last bullet
24 point, which is -- consistently references
25 subscriber value and instructs response

1 accordingly, could you please elaborate on
2 that.

3 A. Yes. In pointing out the
4 inconsistencies in the Bortz 2010-2013, we are
5 an example of the opposite of that,
6 consistently reference value, provide a
7 consistent definition, provided consistent
8 instructions to the respondents, and maintained
9 that consistent task throughout the survey from
10 beginning to end.

11 Q. Okay. And what impact do you -- do
12 these differences, in your opinion, have on the
13 two surveys?

14 A. Well, we think if a survey is going to
15 be used in these proceedings to allocate
16 copyright royalties, that the Horowitz survey
17 is a better survey to use.

18 Q. And why do you say that?

19 A. Because of all these differences that
20 we think focused respondents on the task, focus
21 on clearly defined categories that they
22 understood, and asked them about their
23 subjective assessment of relative value as
24 opposed to speculating about expense that they
25 may never have been involved in.

1 Q. Now I also want to ask you some of the
2 questions about some of the criticisms of your
3 survey.

4 JUDGE FEDER: Before we move off that
5 slide, I have a question about the second to
6 last bullet.

7 THE WITNESS: Going back.

8 JUDGE FEDER: Now, by WGN's
9 blacked-out programming, I assume you're
10 referring to programs that appear in the WGNA
11 national feed that is not identical to
12 programming that appears on WGN-DT in Chicago,
13 right?

14 THE WITNESS: Yes.

15 JUDGE FEDER: The first question is
16 did you have or did your interviewers have any
17 indication that the respondents understood that
18 that's what is meant by WGN's blacked-out
19 programming?

20 THE WITNESS: The interviewers only
21 conveyed what's in the text of the
22 questionnaire with approximately these words.
23 We can go to the questionnaire.

24 That to -- as a cautionary note, to
25 not give any value to WGN's blacked-out

1 programming.

2 JUDGE FEDER: And did you have any or
3 did the interviewers have any indication that
4 there was any confusion or lack of
5 understanding on the part of the respondents of
6 what that blacked-out programming was?

7 THE WITNESS: There was no indication
8 of confusion.

9 JUDGE FEDER: Okay, thank you.

10 JUDGE STRICKLER: Was any pretesting
11 done on your survey?

12 THE WITNESS: No, the surveys were not
13 pretested.

14 JUDGE STRICKLER: Do you have a
15 standard policy or a standard checklist as to
16 whether or not a survey should be pretested?

17 THE WITNESS: We often pretest surveys
18 for --

19 JUDGE STRICKLER: What are the reasons
20 why you would decide to pretest a survey?

21 THE WITNESS: We often pretest for
22 consumers as far as understanding the questions
23 that we're -- that are being asked.

24 JUDGE STRICKLER: And what was your
25 reason for not pretesting this survey?

1 THE WITNESS: Because we were
2 interviewing a sample of experts in the field
3 and what were -- what we were being asked were
4 concepts that these executives should know.

5 JUDGE STRICKLER: You've done surveys
6 of experts in fields previously?

7 THE WITNESS: Yes.

8 JUDGE STRICKLER: Have you ever
9 pretested those surveys?

10 THE WITNESS: Ever? I don't know, but
11 it could very well be that we did not. And we
12 might have -- there might have been an instance
13 where we did. I would venture not in
14 particular, if they are experts in the field
15 that we were interviewing, that we would
16 probably not pretest the survey.

17 JUDGE STRICKLER: But, sitting here,
18 you can't recall for certain one way or the
19 other whether, in fact, you've pretested
20 surveys of experts in their field, where the
21 survey was involving their field?

22 THE WITNESS: Across 30 years I
23 don't -- in the sense of ever, I don't recall
24 if ever we did pretest and what the reason was.

25 JUDGE STRICKLER: So --

1 THE WITNESS: Can't recall that.

2 JUDGE STRICKLER: So you can't recall
3 a single instance when you did pretest in that
4 context?

5 THE WITNESS: Correct. I don't -- on
6 the positive side, I don't recall an instance
7 that we did.

8 JUDGE STRICKLER: Thank you.

9 JUDGE BARNETT: To be sure I
10 understand, there's pretesting by an external
11 independent agency and then there's running a
12 pilot in-house to see if you run across any
13 stumbling blocks.

14 Did you do either of those?

15 THE WITNESS: This -- in this survey
16 and many others that we do, that is not a
17 pretest; it's an ongoing evaluation from the
18 interviewers, are there problems. And there
19 were no problems reported with this survey.

20 If there were problems, we would stop
21 the process and -- which is another reason for
22 not doing pretesting, because in this
23 particular kind of circumstance, we have that
24 opportunity. In a fast-going 2,000-interview
25 survey with 100 interviewers doing surveys of

1 consumers, we need to make sure it's right
2 before we start. Otherwise, the cat is out of
3 the bag with much expense and much trouble done
4 before we'd find a problem.

5 So that's another reason that, with
6 these kinds of circumstances, we would not do a
7 pretest.

8 JUDGE BARNETT: Thank you. Is this a
9 good chance for us to take a morning break?

10 MR. OLANIRAN: Yes, actually.

11 JUDGE BARNETT: All right. We'll be
12 at recess for 15 minutes.

13 (A recess was taken at 10:35 a.m.,
14 after which the trial resumed at 10:55 a.m.)

15 JUDGE BARNETT: Please be seated. Mr.
16 Olaniran?

17 MR. OLANIRAN: Thank you, Your Honor.

18 BY MR. OLANIRAN:

19 Q. Mr. Horowitz, I was about to ask you
20 about some of the criticisms of the Horowitz
21 survey.

22 Are you aware that you were criticized
23 by Mr. Trautman and Dr. Mathiowetz regarding
24 examples of programs that were not carried that
25 you used, even though you used those programs

1 as examples in your survey?

2 A. Yes, I'm aware of the criticisms.

3 Q. And what is your response to that
4 criticism?

5 A. Across the surveys, there were issues
6 brought up about the amount of compensable and
7 non-compensable programming that we were
8 referring to.

9 Those all stand up as legitimate
10 programming -- category representations up to
11 our respondents to evaluate how much and how
12 little of that they should be valuing.

13 There were some examples of incorrect
14 content not -- not carried.

15 Q. And going back to my question, you had
16 examples of programs, even though those
17 programs are not necessarily carried -- carried
18 by -- carried on any of the signals that the
19 CSO was responding to.

20 Is that inappropriate survey practice
21 to use programming examples, even when those
22 programs are not being carried?

23 A. Programs should be carried. And in
24 most cases, these were representative of the
25 content category that we were trying to

1 illustrate.

2 JUDGE STRICKLER: Again, just so I am
3 clear, I think in answer to one of my questions
4 you said that you didn't pick out any of these
5 examples?

6 THE WITNESS: Correct.

7 JUDGE STRICKLER: They were given to
8 you?

9 THE WITNESS: That is correct.

10 JUDGE STRICKLER: Thank you.

11 BY MR. OLANIRAN:

12 Q. And you were also criticized for
13 improperly including some programs in -- in the
14 wrong categories. Do you recall that?

15 A. I do recall that.

16 Q. And what was your response to that?

17 A. My response to that is that that
18 should have been correct, that those were not
19 examples. We should have given them examples
20 of the other category that they belonged in.

21 So to the extent I don't think those
22 mistakes were far-reaching and that there
23 seemed to be little impact from those, little
24 material impact from those mistakes.

25 But I don't want to go too far down

1 that road because those mistakes should not
2 have happened.

3 JUDGE STRICKLER: How can you come to
4 the conclusion that there was little material
5 impact? What measurement did you do or
6 analysis did you do to come to that conclusion?

7 THE WITNESS: Just by looking at the
8 consistency of the responses we got
9 year-to-year, even in those years that were --
10 where those mistakes were presented to.

11 JUDGE STRICKLER: So there were years
12 where those examples were not included and
13 other years where the examples were included?

14 THE WITNESS: Yes.

15 JUDGE STRICKLER: And comparing those
16 years is how you came to the conclusion that it
17 didn't have anything more than a minimal
18 impact?

19 THE WITNESS: Yes.

20 JUDGE STRICKLER: Thank you.

21 BY MR. OLANIRAN:

22 Q. Did you also make any comparisons to
23 your results for those years in which this
24 happened and the Bortz result?

25 A. I'm sorry?

1 Q. Did you also make comparisons between
2 your results and the Bortz results for the
3 years in which these -- these programs were
4 mis-categorized?

5 A. Yes.

6 Q. Okay. And did you -- I'm sorry. Go
7 ahead.

8 A. The differences stayed consistent in
9 terms of what -- where -- where content was
10 valued and where value was allocated.

11 Q. Okay. Are you also aware that Mr.
12 Singer, who is one of the witnesses, in his
13 testimony, believes that your survey list of
14 WWE Superstars as an example of "other sports"
15 is an improper example because it doesn't
16 consider the show to be a sports program? Are
17 you aware of that?

18 A. Yes, I am aware that he said that.

19 Q. Yes. And what is your response to
20 that?

21 A. That's -- he is entitled to his
22 opinion about any content, whether it is sports
23 or not. It doesn't change the fact that this
24 is in our "other sports" category and content
25 that needed to be allocated some value,

1 assuming it had some.

2 Q. Are you aware of Dr. Mathiowetz's
3 criticism that the Horowitz survey excessively
4 burdened the respondents by requiring
5 respondents to report for multiple CSOs in a
6 single interview and asking respondents about
7 all distant -- distant -- distant -- distant
8 signals transmitted by the respective cable
9 systems? Are you aware of that criticism?

10 A. I'm aware of that criticism.

11 Q. Now, I think you already addressed the
12 question about limiting, capping the respondent
13 -- capping the number of signals to be
14 responded to at eight, as opposed to all of
15 them.

16 I want to ask you about requiring
17 respondents to report for multiple systems.
18 Let me start by how did you handle multiple
19 system -- multi-system respondents? In other
20 words, when you have a CSO that is responding
21 for two or more systems, how did you handle or
22 what is your process for a CSO's response to
23 that --

24 A. I'm sorry, the end of your sentence?

25 Q. The CSOs, how did you handle the

1 situation where a CSO is responsible for
2 multiple systems? What was that process?

3 A. That process was a straightforward
4 one. If, in fact, there were any differences
5 in the channels under consideration, the
6 distant signals that were carried, that
7 respondent was asked about each and every
8 system separately.

9 To the extent that all channels were
10 the same, the respondent was only asked to
11 allocate value once.

12 Q. And why did you handle that that way?

13 A. That would be burdensome and yield to
14 poor quality data to put a respondent through
15 the tedium of answering the same exact question
16 with the same exact channels with another
17 exercise of allocation, just bad survey
18 practice overall.

19 We had no choice on the others. If it
20 was different, they needed to answer the
21 questionnaire separately.

22 Q. In other words, where the complement
23 of signals --

24 A. Yes.

25 Q. -- on -- on -- on each questionnaire

1 was different, you went through that process;
2 is that correct?

3 A. Yes, we did.

4 JUDGE STRICKLER: Is that depicted or
5 explained anywhere in the survey form, or that,
6 I take it, there were just multiple surveys to
7 people, to executives, who had different
8 systems they were responsible for?

9 THE WITNESS: Yes, the interviewer
10 brought up the separate system. It was not
11 explained in the survey form. At some point it
12 was -- it was clarified that they are
13 responsible for multiple systems and they knew
14 they would be interviewed sequentially about
15 each.

16 JUDGE STRICKLER: How did the
17 interviewer know to ask that if it wasn't on
18 the survey form?

19 THE WITNESS: You know, I don't know
20 the answer to your question precisely. I'm
21 certain it was part of the computer program
22 that would indicate that here is a set of
23 systems with this particular respondent with
24 all the same line-ups.

25 JUDGE STRICKLER: Was that part of the

1 computer program included within your -- either
2 of your written testimonies?

3 THE WITNESS: I do not recall it being
4 written in my testimony about this process of
5 how the interviewer knew whether -- whether
6 they were doing multiple interviews or only one
7 interview. That is an excellent question.

8 JUDGE STRICKLER: Do you know whether
9 your -- you have turned over to your counsel
10 for discovery in this proceeding the part of
11 the computer program that distinguished among
12 -- that provided instructions to the
13 interviewer with regard to multiple systems?

14 THE WITNESS: If it was in the
15 computer program, we would have turned that
16 over.

17 JUDGE STRICKLER: Thank you.

18 BY MR. OLANIRAN:

19 Q. Now, where would, the program the
20 Judge is referring to, would that have been a
21 program that you had or would it have been a
22 program that the field house used?

23 A. That the field house used in
24 programming the survey.

25 Q. And who did the actual programming?

1 A. The field house experts on programming
2 surveys.

3 Q. And what did you do to maintain
4 quality assurance with regard to what the field
5 house did?

6 A. The program was tested that it was
7 accurate.

8 Q. Who tested the program?

9 A. The field house tested the program.

10 Q. Okay. Did you have any oversight from
11 your side as to what the field house was doing?

12 A. Yes, one of our staff would have also
13 looked at the program. The program called up
14 the correct questionnaires.

15 Q. And who at your -- which of your staff
16 would have been responsible for that?

17 A. Nuria Riera, our SVP of operations
18 would be responsible.

19 Q. And what is her position?

20 A. She is the SVP of research operations,
21 oversees all the research and staff.

22 Q. And does she have any involvement in
23 any of the surveys from 2010 through 2013?

24 A. Yes, she did.

25 Q. And could you please explain what her

1 role was in the survey?

2 A. Her role was key in all aspects of the
3 survey, working with me on developing the
4 questionnaire and overseeing project management
5 on getting the survey implemented properly
6 through the field and through programming.

7 Q. And she would have been looking over
8 the shoulders of the field house also?

9 A. She would have been, yes.

10 Q. Thank you, Mr. Horowitz.

11 MR. OLANIRAN: I have no further
12 questions.

13 THE WITNESS: Thank you.

14 JUDGE BARNETT: Mr. Lutzker?

15 CROSS-EXAMINATION

16 BY MR. LUTZKER:

17 Q. Good morning, Mr. Horowitz. My name
18 is Arnold Lutzker and I represent the Settling
19 Devotional Claimants. And what I would like to
20 do is just clarify a couple of points in your
21 testimony, in your written testimony and oral
22 testimony today.

23 As I understand it, unlike the Bortz
24 survey, your survey results did include cable
25 systems that carried Public Television distant

1 signals only or Canadian signals only or a
2 combination of those signals; is that correct?

3 A. Yes.

4 Q. And in that regard, the Horowitz
5 survey results do not require any adjustment to
6 systems that were carrying the Public
7 Television signals only or the Canadian signals
8 only or the combination of those signals; would
9 that be correct as well?

10 A. No -- no adjustment other than the
11 weighting adjustment that Professor Frankel did
12 across all the survey results.

13 Q. Okay. And were you aware that in
14 connection with the Canadian programming, there
15 are certain Devotional programs that are
16 allocable to the Devotional Claimant category
17 that are carried on Canadian signals? Were you
18 aware of that?

19 A. I was not aware of that.

20 Q. And to the extent that that is
21 established in the record, would there be some
22 adjustment of the Canadian share for the
23 Devotional category as a result of that?

24 MR. OLANIRAN: Objection, Your Honor.
25 It is outside the scope of his testimony.

1 MR. LUTZKER: The questionnaire
2 provides for Canadian programming and it
3 identifies Canadian programming without
4 breaking it into any other categories. And, as
5 I understand the results, they are allocable
6 entirely to the Canadian category.

7 And, as a result, I would like him to
8 clarify whether, in light of the fact that
9 there are other category programming on
10 Canadian stations, that some portion of that
11 may need to be adjusted.

12 MR. OLANIRAN: Your Honor, it is -- he
13 never addressed this anywhere in his testimony.
14 To the extent Mr. Lutzker wishes to analyze the
15 content of the programming, I think this is the
16 wrong witness.

17 JUDGE BARNETT: I am going to allow
18 it. He surveyed specifically for Canadian
19 programming so I think he can answer that
20 question. Overruled.

21 THE WITNESS: Can I ask you to repeat
22 the question, please?

23 BY MR. LUTZKER:

24 Q. Well, sure. Just to the extent that
25 there are other category programings, like

1 Devotional programming, within the Canadian
2 programming content that you surveyed, would it
3 be appropriate to make some adjustment in favor
4 of the other categories that appear on Canadian
5 stations?

6 A. The only thing I know in answer to
7 your -- partial answer to your question is that
8 all of that would have been included in the
9 allocation to the Canada -- the Canadian
10 programming.

11 Whether there should be an adjustment
12 or not, I don't know in terms of the whole
13 process of this proceeding or not.

14 Q. And you don't -- you don't try to
15 break out whether there should be an adjustment
16 in the Canadian category?

17 A. No.

18 Q. Okay. Thank you.

19 Now, the Horowitz survey does
20 specifically address the issue of
21 non-compensable programming on WGNA; is that
22 correct?

23 A. Yes.

24 Q. And the design is to particularly
25 address the portion of non-compensable content

1 that's allocable both to Devotional category
2 and the Program Supplier category in
3 particular; is that correct?

4 A. Could you repeat that, please? Since
5 you brought in the others, I got a little
6 confused.

7 Q. Yeah. Well, did you understand that
8 the purpose of addressing non-compensable
9 content on WGNA was designed primarily to
10 isolate and identify non-compensable content
11 particularly addressing the Devotional category
12 and the Program Supplier category?

13 A. Yes.

14 Q. And would it be true that your survey
15 did, in fact, address not only the
16 non-compensable issue on WGN-only systems,
17 systems that only carried WGNA, but also
18 carried WGNA and other signals?

19 A. Yes.

20 Q. And those results are fully
21 incorporated into your final weighted survey
22 results; is that correct?

23 A. Yes, they are.

24 Q. And in that regard, your survey would
25 not require any further adjustment of the

1 Devotional category or Program Supplier
2 category to accommodate systems that carry WGNA
3 along with other signals?

4 A. Would not be required.

5 Q. Would not require any -- you would not
6 require any further adjustment of the
7 Devotional category and the Program Supplier
8 category for systems that carried WGNA and
9 other signals?

10 A. Correct.

11 Q. Okay. Now, assuming that the Judges
12 do view the survey, your survey and any other
13 surveys in this proceeding of cable operators
14 as providing very useful, perhaps the most
15 useful evidence relating to the relative
16 marketplace value of shares among the parties
17 in this proceeding, do I understand you to say
18 that the Horowitz survey is both valid and the
19 most reliable survey offered into evidence in
20 this proceeding?

21 A. Yes.

22 Q. Now I would like to just turn to page
23 16 of your testimony.

24 JUDGE STRICKLER: Direct?

25 MR. LUTZKER: Of the direct testimony,

1 yes. And this is in Exhibit 6012 on page 16.

2 BY MR. LUTZKER:

3 Q. Now, do I understand -- do you have
4 that?

5 A. Yes, I do.

6 Q. Okay. Do I understand that the
7 weighted percentages set forth in Table 3.2
8 constitute the proper allocation of shares in
9 this proceeding based on your Horowitz survey?

10 A. Yes.

11 Q. And in that table you indicate the
12 shares for the Devotional category range from
13 3.8 to 5.92 percent during the four-year
14 period; is that correct?

15 A. Yes.

16 Q. Okay. Thank you.

17 MR. LUTZKER: I have no further
18 questions.

19 JUDGE BARNETT: Mr. Garrett?

20 CROSS-EXAMINATION

21 BY MR. GARRETT:

22 Q. Good morning, Mr. Horowitz. My name
23 is Bob Garrett and I represent the Joint Sports
24 Claimants.

25 A. Good morning.

1 Q. A couple of housekeeping matters.
2 First, I would like to give you some
3 cross-examination binders that have various
4 materials that we may be referring to.

5 MR. GARRETT: May I approach the
6 witness, Your Honor?

7 JUDGE BARNETT: You may.

8 BY MR. GARRETT:

9 Q. I believe we have two binders for you.

10 A. Okay.

11 MR. GARRETT: Your Honor, as another
12 housekeeping matter, we have several exhibits
13 that I would like to move into admission. I
14 have conferred with our colleagues here and I
15 don't believe anyone has any objections.

16 They are Exhibit Numbers 1133 through
17 1145 inclusive.

18 JUDGE BARNETT: 1133 through 1145
19 inclusive are admitted.

20 (Exhibit Numbers 1133, 1134, 1135,
21 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143,
22 1144, 1145 were marked and received into
23 evidence.)

24 MR. GARRETT: Thank you, ma'am.

25 BY MR. GARRETT:

1 Q. Mr. Horowitz, let's begin by turning
2 to page 22 of your written direct testimony.

3 A. Do I find that in the binder or --

4 Q. Yes.

5 A. -- I should bring up my own?

6 Q. It should be the first tab.

7 A. Number 1?

8 Q. Number 1.

9 A. 6012, direct testimony?

10 Q. Yes, sir.

11 A. And page? I'm sorry.

12 Q. 22.

13 A. Okay.

14 Q. Now, I want to just focus on that
15 carryover paragraph up at the top beginning
16 "the buyer." Do you see that?

17 A. Carryover paragraph that starts with
18 "i.e., the cable system"?

19 Q. Right. And the next sentence there
20 actually.

21 A. Oh, I see, yes.

22 Q. It says, "the buyer or decision-maker
23 in these operator surveys is an intermediary
24 whose purpose is to bring subscribers the value
25 that they actually pay for when subscribing to

1 cable service. Done well, such a survey may
2 illuminate the criterion by which to allocate
3 royalties."

4 Do you see that?

5 A. Yes.

6 Q. Can you tell me what you meant by
7 that?

8 A. I meant that if we're going to use a
9 survey, we should think about what it is that
10 we're doing, and that -- in this case the
11 operator was an intermediary for the
12 subscriber. We're asking him to stand in and
13 tell us about value to their subscribers. In
14 his case value for subscriber acquisition and
15 retention.

16 Q. Okay. I know you in your written
17 testimony express a preference for viewing
18 data, correct?

19 A. Yes, I have said that viewing data
20 ought to be a part of this proceeding in
21 several places, I think.

22 Q. Assume for the moment that there is no
23 viewing study. Assume we have a hypothetical
24 hearing where no such study has been admitted.
25 Okay?

1 A. Okay, no viewing.

2 Q. And all we have is your survey. Got
3 that?

4 A. Yes.

5 Q. Can the Judges rely upon your survey
6 in order to determine the relative market
7 values of each of the different agreed
8 categories of programming?

9 A. They can rely on it. I think it is a
10 compromise over having the behavioral data
11 that's needed to back up those assessments by
12 the stand-in operator.

13 Q. You believe your survey shows the
14 relative fair market value of the different
15 categories of programming in this proceeding?

16 A. The survey does the best job it can of
17 getting the valuation by these proxies.

18 Q. It says: "Done well, such a survey
19 may illuminate the criterion by which to
20 allocate royalties." Correct?

21 A. Yes.

22 Q. And you believe your survey was done
23 well, don't you?

24 A. Yes.

25 Q. And so you believe that your survey

1 can allocate -- I'm sorry, illuminate the
2 criterion by which to allocate royalties,
3 correct?

4 A. Yes.

5 Q. And it can show relative fair market
6 values of the different program categories in
7 this proceeding?

8 A. It can show the criteria. It can be
9 used for that.

10 Q. Thank you. And as I understand it,
11 you started with the 2004-'05 Bortz survey,
12 correct?

13 A. Yes.

14 Q. And you followed certain of the
15 methodology of that survey but made
16 improvements to it?

17 A. Yes.

18 Q. Okay. And you later recognized that
19 the Bortz had also changed portions of its
20 methodology between 2004-'05 and 2010-'13?

21 A. Changed its survey, yeah.

22 Q. Changed its methodology in part?

23 A. I don't know at this moment about
24 changes in methodology.

25 Q. You think it changed its

1 questionnaire?

2 A. Yeah.

3 Q. Okay. And you think those changes
4 actually made the survey worse, as I understand
5 it?

6 A. Yeah.

7 Q. Okay. So let me go to slide 1, Geoff,
8 which is taken from your written direct
9 testimony at 16. I think this was the same
10 chart that Mr. Lutzker was referring to.

11 Do you have that before you?

12 A. Yes.

13 Q. And so this shows the relative
14 allocations to each of the different program
15 categories identified on the left-hand side,
16 correct?

17 A. Yes.

18 Q. And I'm going to focus for a moment
19 here on the live coverage of professional and
20 college team sports. Do you see that?

21 A. Yes.

22 Q. And just for simplicity purposes this
23 morning, let's refer to that as JSC.

24 A. JSC.

25 Q. So on average, across all four years,

1 respondent -- well, in each of the four years,
2 it is correct, is it not, that the respondents
3 gave their highest allocation to the JSC
4 category?

5 A. Compared to any other individual row,
6 yes.

7 Q. And that -- we will go all the way
8 over to the right. 2010 it was 31.94 percent?

9 A. Yes.

10 Q. And then in 2011, 27.13 percent,
11 correct?

12 A. Yes.

13 Q. And in 2012, 25.5 percent?

14 A. Yes.

15 Q. And in 2013, 35.28 percent?

16 A. Yes.

17 Q. And that averages to approximately
18 30 percent over all four years?

19 A. Okay.

20 Q. And it is the highest valuation in
21 each of these years by 9 to 10 percentage
22 points, correct?

23 A. Yes, compared to any other individual
24 row, yes.

25 Q. Okay. Let me turn to slide 2. Do you

1 recognize this as the results of the Bortz
2 study for 2010 through '13?

3 A. I don't recognize it, but that's what
4 it is labeled as on this.

5 Q. Okay. Well, are you aware that the
6 Bortz study also found that the JSC category
7 was the most highly valued category in each of
8 the four years?

9 A. Yes.

10 Q. And it was generally the highest by a
11 considerable margin, correct?

12 A. Yes.

13 Q. Now, your survey also asked the
14 respondents about the importance of the
15 different categories of programming to
16 subscribers, correct?

17 A. Um-hum, yes.

18 Q. So we can just switch to slide 3. And
19 this is the question that you asked, taken from
20 your written direct testimony at page 29.

21 A. Yes.

22 Q. It says: "We have been discussing the
23 several types of programming on your distant
24 television station, and using a 1 to 5 scale,
25 where 1 means not important at all and 5 means

1 very important, please tell me how important
2 you think each of the following types of
3 programming on these distant television
4 stations is to your subscribers."

5 Did I read that right?

6 A. Yes.

7 Q. And if we go to the next slide, we see
8 that the JSC category received the highest
9 ratings; is that correct?

10 A. Yes.

11 Q. This is the slide here that just shows
12 for 2010 but the results of all four years are
13 the same, correct? Well, they are not the
14 same. They are the same in the sense that JSC
15 is rated as the most important category to the
16 respondent subscribers, correct?

17 A. Yes.

18 Q. So in 2010, it was 84 percent,
19 correct?

20 A. Yes.

21 Q. And the next highest category would
22 have been syndicated series at 33 percent,
23 correct?

24 A. Yes.

25 Q. And if we go to your -- and we don't

1 need to do that now, but we can go to your --
2 well, actually, let's go to your testimony at
3 page 19 and 20. That's your written direct
4 testimony.

5 And these are the tables here for each
6 of the other years, 2011, 2012, and 2013,
7 correct?

8 A. Why am I not seeing this? This is my
9 fault.

10 Q. Let's go to page 19 up at the top. We
11 have Table 6.1.

12 A. Better.

13 Q. And we see respondents' perceived
14 importance to subscribers.

15 A. Yes. Now I see the year. I just
16 didn't pick it up on mine.

17 Q. And so in 2013, again, sports is the
18 -- the JSC category is the highest at
19 64 percent, correct?

20 A. Yes.

21 Q. And if we go to the next table, 6.2 --

22 A. Yes.

23 Q. -- is that 73 percent, correct?

24 A. Yes.

25 Q. And if we go to Table 6.3, it is

1 83 percent?

2 A. Yes.

3 Q. And Table 4, which was the slide we
4 had up a moment ago, it was 84 percent,
5 correct?

6 A. Yes.

7 Q. Now, the results that I just cited to
8 you are consistent with the results for a
9 similar question in the 2010-'13 Bortz surveys,
10 are they not?

11 A. You are saying the results are similar
12 to --

13 Q. The Bortz 2010 through '13 surveys
14 asked questions about the importance of
15 particular categories of programming. Do you
16 recall that?

17 A. Yes.

18 Q. And the results that they received
19 were consistent with the results that you
20 received, correct?

21 A. The results are different but
22 consistent. They asked a different question.

23 Q. They asked a rank order question,
24 correct?

25 A. Um-hum.

1 Q. And you said, I think earlier, that a
2 rank order question and your ratings question
3 are just two different ways --

4 A. Legitimate choices.

5 Q. But they are both well recognized in
6 the industry, correct?

7 A. Yeah.

8 Q. So let's just go to slide 5. And so
9 here we see the results for all four years.
10 Slide 5, by the way, is Table 4-8 taken from
11 the Bortz report, Exhibit 1001, at page 51.

12 A. Um-hum.

13 Q. And in this particular question, lower
14 is better, right, if 1 is most important?

15 A. By rank, yes.

16 Q. Okay. So, again, live professional
17 and college team sports ranks the highest of
18 all the categories in each of the four years of
19 the Bortz survey, correct?

20 A. Yes.

21 Q. And switch to slide 6. So we're clear
22 on what that represents, it says now: I'd like
23 to ask you -- I'm sorry, this is the Bortz
24 survey Question 2b for which the previous slide
25 had presented the results.

1 And it says: "Now, I'd like to ask
2 you how important it was for your system to
3 offer certain categories of programming that
4 are carried by these stations." Right?

5 A. Um-hum.

6 Q. I'm sorry?

7 A. Yes, I follow.

8 Q. And, as you said, the results, the
9 Bortz Question 2b are similar to your
10 importance form of question?

11 A. In a directional sense that you are
12 pointing them out, one is first rank and one
13 was 60 or 70 or 80 percent importance. Other
14 than that, the two numbers are not comparable.

15 Q. Okay. But regardless of which
16 particular methodological choice you make here,
17 whether it is a rating or whether it is a
18 ranking, sports or JSC is going to rank Number
19 1?

20 A. It had the highest importance rating
21 in the Horowitz survey and it has the highest
22 rank in this survey.

23 Q. Got it. Thanks.

24 Incidentally, this is a question that
25 occurred to me. You have done just a ton of

1 surveys here in the media industry, including
2 cable television industry. Correct?

3 A. Yes.

4 Q. Over 30 years, correct?

5 A. Yes.

6 Q. Have you done other surveys of cable
7 executives in the past?

8 A. Yes.

9 Q. Why do cable executives participate in
10 surveys like this?

11 A. They are cooperative. We tap into
12 their expertise, and we pay them an honorarium.

13 Q. Okay. And that's the only reason? Do
14 they have an interest in having good, solid
15 research done in the industry they can value
16 off of?

17 A. They would in this case. Nobody is
18 offering them the report or access to these --

19 Q. Okay.

20 A. -- data.

21 Q. But in other cases that you have done
22 --

23 A. Sometimes there is -- it is used as an
24 incentive that we will provide a summary of the
25 data that you are participating in, and that's

1 often a very effective incentive.

2 Q. Okay. You responded to a number of
3 the criticisms that, I guess, the JSC experts
4 had. And I would like to just focus for a
5 moment here on some of the criticisms that the
6 Program Suppliers witnesses have of your
7 survey.

8 Did you review the testimony of Dr.
9 Steckel in this proceeding?

10 A. I reviewed Dr. Steckel's briefly.

11 Q. Briefly, okay. And his testimony is
12 Exhibit 6014, which should be tab -- it is in
13 the pocket of the first binder.

14 A. Oh, I see.

15 Q. So, Geoff, if we could just bring that
16 up for a second.

17 And I would ask you to turn to page 7.

18 A. Okay, I'm there.

19 Q. Dr. Steckel says, under Summary of
20 Conclusions, 1, "neither the Bortz survey nor
21 the Horowitz survey is sufficiently capable of
22 assisting the Judges in determining the
23 relative market value of the programming at
24 issue in this proceeding."

25 Do you see that?

1 A. Yes, I do.

2 Q. Do you agree with that?

3 A. I think Dr. Steckel has a strong
4 opinion about whether these respondents can --
5 can perform with any degree of accuracy or
6 knowledge the constant sum question.

7 Q. But I am asking for your opinion. I
8 know what Dr. Steckel thinks. The question is,
9 do you --

10 A. I have already stated that survey data
11 is insufficient for allocating value. There is
12 behavioral data available out there that can be
13 used in conjunction with survey data to come up
14 with a fair allocation.

15 Q. In our hypothetical hearing here,
16 where there is no such viewing data and no
17 weight is given to that data.

18 A. I think it is a tough decision, it
19 would be a tough decision on the part of the
20 Tribunal, to actually just accept the constant
21 sum data as it, when I know that viewing data
22 exists.

23 Q. Okay. Now, you testified earlier that
24 there were certain improvements that you made
25 in the Bortz survey, correct?

1 A. Yes.

2 Q. And one of those improvements was to
3 add an "other sports" category, correct?

4 A. Yes.

5 Q. And "other sports" intended to reflect
6 those sports programs that did not fall within
7 the live professional and collegiate team
8 sports category, correct?

9 A. Yes.

10 Q. And you considered all such "other
11 sports" to be within the Program Suppliers
12 category, correct?

13 A. I have come -- I have come to learn
14 there is some programs in sports that are in a
15 different category.

16 Q. Okay. Let me just -- Geoff, could you
17 pull up that November 25th order here. And I
18 want to focus not on the Commercial Television
19 Claimants category but on the Program Suppliers
20 category. Can you do that?

21 So this is the description of agreed
22 categories of Claimants in this proceeding.
23 Let's actually go up to Program Suppliers,
24 Geoff.

25 Did you review this order, by the way,

1 before you engaged in the process of designing
2 the survey?

3 A. I did not personally review it.

4 Q. Okay. This defines the Program
5 Suppliers category as syndicated, series,
6 specials, and movies, except those included in
7 the Devotional Claimants category. And then it
8 goes on to have a further definition.

9 You have not seen this definition
10 before?

11 A. I have not seen this definition in
12 this form.

13 Q. Is it clear, I guess it is from
14 reading this, that there is no reference in it
15 to "other sports," is there?

16 A. There is no reference in this
17 paragraph to "other sports."

18 Q. To be within the Program Suppliers
19 category, "other sports" would have to be a
20 syndicated series, specials, and movies,
21 correct?

22 A. I don't know. I don't personally know
23 where "other sports" fits under those layman's
24 interpretation of these. It is not -- it would
25 not include sports.

1 Q. Okay. It is fair to say that within
2 the category syndicated series, specials, and
3 movies, there are a number of different types
4 of programs, correct?

5 A. Fair to say, yes.

6 Q. So, as a matter of fact, in your
7 survey, if we can just quickly go to your
8 testimony, page 36 as an example here, and down
9 at the bottom.

10 A. Yes.

11 Q. Small b there, syndicated series.

12 A. Um-hum.

13 Q. It says, "syndicated series such as
14 sitcoms, dramas, children's shows, talk shows,
15 reality shows, game shows, and other series
16 broadcast on" -- and then you would list the
17 station, correct?

18 A. Yes.

19 Q. So these are some of the different
20 types of syndicated series, sitcoms, right?

21 A. Yes.

22 Q. And dramas?

23 A. Yes.

24 Q. And children's shows?

25 A. Yes.

1 Q. Right? And so forth, all right. You
2 created a separate category here for "other
3 sports" in your survey, correct?

4 A. Yes.

5 Q. Did you give any consideration to just
6 simply listing "other sports" as -- I'm sorry,
7 Geoff. Could you put that back up?

8 Syndicated series, such as sitcoms,
9 dramas, children's shows, talk shows, reality
10 shows, game shows, other sports, did you give
11 any consideration to that?

12 A. Did not give any consideration to
13 doing that.

14 JUDGE STRICKLER: The Program
15 Suppliers category in the Bortz survey makes --
16 in its list includes specials. Given your
17 expertise in the industry, what does specials
18 mean?

19 THE WITNESS: Specials would mean
20 things like award shows or one-time events or
21 one-time concerts of content like that and are
22 not part of a series or known category of other
23 types of content.

24 JUDGE STRICKLER: Thank you.

25 BY MR. GARRETT:

1 Q. Infomercials are also a type of
2 syndicated series, correct?

3 A. I -- I don't know.

4 Q. Did you give any consideration to
5 creating a separate category for infomercials?

6 A. Did not.

7 Q. In Ms. Saunders' testimony in this
8 proceeding, she also goes through the various
9 types of programs that come within the Program
10 Suppliers category.

11 And one of the things she refers to is
12 news programs.

13 A. She refers to news programs?

14 Q. News programs. Are you aware that
15 those also come within the -- some of them come
16 within the Program Suppliers category?

17 A. No.

18 Q. It looks like The McLaughlin Group,
19 Wall Street Journal Report, are you familiar
20 with those programs?

21 A. I have heard of those programs.

22 Q. Okay. Now I ask you to turn for a
23 moment to the Exhibit 1002, which is Mr.
24 Trautman's written direct testimony, which I
25 believe is Tab 4 in your binder.

1 A. I see 1002. I am flipping the pages.

2 And, yes, I see that.

3 Q. And let me ask you to go to page 17.

4 That first full paragraph there, the first
5 sentence, Mr. Trautman says that there were 691
6 respondents who you asked to value other --
7 other sports.

8 Do you see that?

9 A. Half the 691 -- yes, I do see that.

10 Q. All right. That -- that -- you have
11 no reason to dispute that number as being
12 correct, do you?

13 A. I don't have any reason to dispute it,
14 but it is -- it is not clear what this number
15 represents, though.

16 Q. Well, I think the way I am reading it,
17 and you tell me if I am wrong here, that you
18 had 691 survey respondents who you asked to
19 value or give value to the "other sports"
20 category?

21 A. This is not in any single year,
22 though.

23 Q. No, this is over the period 2010
24 through '13.

25 A. Okay. All right.

1 Q. Does that sound about right to you?

2 A. Yes, sounds about right.

3 Q. And he says that about 308 of those
4 respondents carried WGNA as their only
5 commercial distant signal. Do you see that?

6 A. Yes.

7 Q. Does that sound right to you?

8 A. I have no reason to dispute that --

9 Q. Okay.

10 A. -- number.

11 Q. So for those 308 respondents, the only
12 commercial distant signal that they carried was
13 WGNA, right?

14 A. Yes.

15 Q. And he goes on to say that WGNA
16 televised less than two hours per year of
17 compensable other sports programming during
18 that period.

19 Do you see that?

20 A. I see that, that part of the sentence,
21 yes.

22 Q. And do you have any basis to dispute
23 that?

24 A. No.

25 Q. At the time that you were designing

1 your questionnaire or questionnaires, were you
2 aware that there was less than -- there was two
3 hours or less of "other sports" programming on
4 WGNA?

5 A. No.

6 Q. Have you since become aware of that?

7 A. I have since become aware of that.

8 Q. And do you have any basis to dispute
9 that number?

10 A. No.

11 Q. Had you known that there was less than
12 two hours of compensable "other sports"
13 programming on WGNA during these years, would
14 you have designed your survey to ask those
15 respondents carrying WGNA about "other sports"?

16 A. I would have asked the other sports
17 value.

18 Q. Even with only two hours or less per
19 year?

20 A. Even with only two hours or less per
21 year.

22 Q. And in one year it was 30 minutes.
23 You would still have asked the question to
24 value the other sports?

25 A. That fact in and of itself would not

1 preclude asking the question.

2 Q. Okay. The "other sports" in years
3 2011, 2012, and 2013 consisted of a single
4 horse race. Are you aware of that?

5 A. I'm not aware of that per se.

6 JUDGE STRICKLER: You said before,
7 when I was asking you questions, you said the
8 examples of other sports were provided to you
9 by Program Suppliers. Is that correct?

10 THE WITNESS: That is correct.

11 JUDGE STRICKLER: But it was your
12 decision rather than your client's decision to
13 have another sports programming category?

14 THE WITNESS: The other sports
15 category was discussed as a design improvement
16 to the survey among the group of us working on
17 the survey.

18 JUDGE STRICKLER: Was it your
19 independent opinion that it should be a
20 separate category?

21 THE WITNESS: Yes, since sports were
22 not included -- this kind of sports was not
23 included anywhere else.

24 JUDGE STRICKLER: Thank you.

25 BY MR. GARRETT:

1 Q. And in formulating that opinion, did
2 you do any kind of research or analysis or
3 request any type of information as to how much
4 other sports programming there was on WGNA or
5 any other signal?

6 A. No, I did not.

7 Q. It didn't make any difference to you?

8 A. It didn't make any difference to me as
9 a survey predictor.

10 Q. Okay. Let me go -- let's stay on page
11 17. We're going to go to the second paragraph,
12 the second sentence.

13 A. Yes, I see that.

14 Q. It says: There was no compensable
15 "other sports" on WGNA during 2010 through '13
16 other than two hours of WWE Superstars in 2013
17 -- I'm sorry, in 2010.

18 Do you see that?

19 A. Um-hum.

20 Q. Were you aware of that fact when you
21 were designing your 2010 survey?

22 A. No.

23 Q. Because it didn't make any difference
24 to you or not, how much or how little
25 programming was actually in the "other sports"

1 category?

2 A. The -- the programming category was
3 provided to me by the MPAA.

4 Q. And you didn't ask them whether or how
5 much of that programming was actually on WGNA?

6 A. No, I didn't.

7 Q. Because you decided it didn't make any
8 difference to you how much or how little?

9 A. Yes.

10 Q. Okay. Now, you used WWE Superstars as
11 an example of "other sports" in 2010, correct?

12 A. Yes.

13 Q. Were you aware of any other
14 programming on -- "other sports" programming on
15 WGNA in 2010 besides WWE Superstars?

16 A. No. I shouldn't say no. This is from
17 recall now. Whatever examples were provided of
18 the programming is what we included in the
19 survey.

20 So was there another? Maybe there
21 was. I would have to look through and we could
22 go through it.

23 Q. Well, that's my question. You said in
24 the 2010 survey that WWE Superstars is an
25 example of "other sports" on WGNA, correct?

1 A. Yes.

2 Q. What other "other sports" were there
3 on WGNA in 2010, if this is an example?

4 A. The only ones that I would know about
5 were ones that were put as examples in our
6 survey. So I would have to look to see if
7 there were any others in our survey besides
8 that.

9 Q. All right. Well, let's go to your
10 questionnaire for 2010. I am going to use one
11 of the exhibits that we have.

12 For the record, 1133, 1134, 1135, and
13 1136 are the actual questionnaires. Well,
14 rather than me telling you, let me ask you to
15 turn to 1133.

16 Do you have that, Mr. Horowitz?

17 A. 11 --

18 Q. It should be Tab 9.

19 A. I have 1133.

20 Q. That's the 2010 cable operator
21 questionnaire. Do you see it?

22 A. Yes.

23 Q. Do you have that before you?

24 A. Yes.

25 Q. And I know that you had included as an

1 appendix to your report sort of a compilation
2 of the different survey questions for 2013,
3 correct?

4 A. Yes.

5 Q. And in discovery you had produced to
6 us the full questionnaire for each of the five
7 types of systems that you had surveyed,
8 correct?

9 A. Yes.

10 Q. All right. So if we go to 2010, we
11 see that the first six pages is a complete 2010
12 cable operator questionnaire for Canadian-only
13 systems, correct?

14 A. Yes.

15 Q. And if we skip ahead to what really is
16 the seventh page, we have the complete 2010
17 cable operator questionnaire for your
18 non-network carrying stations. It says
19 stations, but it really means systems, correct?

20 A. Yes.

21 Q. Then if we go a little further in, we
22 will see that we have the questionnaire for
23 your PBS-only systems, your network carrying
24 systems, and then finally at the end the
25 WGN-only systems. Do you see that?

1 A. Yes.

2 Q. So let me ask Geoff to just bring up
3 that last, I believe it is a tab, the 2010
4 cable operator questionnaire for WGN-only
5 systems. And we will go over to page 4.

6 Just so we're clear, this is the form
7 of the questionnaire that you would have
8 administered to a cable operator whose only
9 distant signal was WGNA, correct?

10 A. Yes.

11 Q. And on page 4 -- well, actually, let's
12 go to page 5, where we get to the constant sum
13 question.

14 A. Yes.

15 Q. Number 6 there. That's the constant
16 sum question, correct?

17 A. Um-hum.

18 Q. And if we scroll down, I guess
19 actually we have to go over to the next page.

20 A. Yes.

21 Q. Your category description is "other
22 sports programming broadcast on" but it's
23 broadcast on WGNA, right, that's what you would
24 put there?

25 A. Yes.

1 Q. And then examples include WWE
2 Superstars. Do you see that?

3 A. Yes.

4 Q. Did you ask MPAA whether there were
5 other sports besides WWE Superstars on WGNA in
6 2010?

7 A. We did not.

8 Q. Were you aware that WWE Superstars was
9 shown both on a compensable and a
10 non-compensable basis on WGNA during 2010?

11 A. Was I aware, no.

12 Q. Let me go, Geoff, switch back to Mr.
13 Trautman's testimony, page 17.

14 A. What exhibit is that?

15 Q. I'm sorry, this is 1001, which will
16 also be up on the screen there for you.

17 A. Yes, I see that.

18 Q. Page 17. I think we have the wrong
19 one up on the screen here, Geoff. This is --
20 1002. My fault. My fault. Sorry.

21 A. 1002 is the exhibit? I'm sorry.

22 Q. So page 17 down near the bottom.

23 A. Yes.

24 Q. And he says about four lines up, "the
25 2010 reference to wrestling as an example was

1 particularly problematic because WGNA did
2 televise 138 episodes of WWE Superstars in 2010
3 on a non-compensable basis."

4 Do you see that?

5 A. Yes.

6 Q. All right. Do you have any basis to
7 dispute that?

8 A. No.

9 Q. Did you ask the MPAA whether the
10 example that you gave was an example of a
11 program that was actually shown both on a
12 compensable and non-compensable basis?

13 A. No.

14 Q. And the way you dealt with this, as I
15 understand it, is you instructed the
16 respondents to disregard any programming that
17 would have been blacked out; is that correct?

18 A. Yes.

19 Q. And what is the basis for concluding
20 that the respondents would have known that 138
21 episodes of WWE had been blacked out on WGNA
22 and that only two of those total 140 episodes
23 were actually compensable?

24 A. As you have picked out an extreme
25 example, and -- but it fits under the category

1 of what these respondents were expected to do
2 in answering everyone's survey.

3 Q. Well, you referred to it as an extreme
4 example, but, once again, this is the survey
5 that was administered to all of the respondents
6 who carried WGNA-only, correct?

7 A. Yes.

8 Q. And approximately 30 percent of your
9 respondents were respondents who carried WGNA
10 only, correct?

11 A. Yes.

12 Q. And so in all cases, for those
13 respondents, they were told that an example of
14 "other sports" was WWE Superstars, correct?

15 A. Yes.

16 Q. And WWE Superstars was, in fact,
17 retransmitted -- was not retransmitted on the
18 WGNA signal on a compensable basis, correct?

19 A. Other than two, is that what --

20 Q. Other than -- 140 total. Two were
21 retransmitted on a compensable basis, correct?

22 A. And your question is?

23 Q. I have this problem. What is the
24 basis for your concluding that those
25 respondents would have understood, simply by

1 being instructed to disregard the blacked-out
2 programming, that only two of the 140 episodes
3 of WWE Superstars were compensable?

4 A. Our assumptions were about respondents
5 in the entire survey about being able to know
6 what was compensable and non-compensable, what
7 programs are carried and not.

8 Q. And how to value those programs, too,
9 I assume?

10 A. I'm sorry?

11 Q. Your assumption was also that they
12 knew how to value the different types of
13 programming?

14 A. Yes, would be incorporated into their
15 value -- the value of that programming, yes.

16 Q. Because that's their job, that's their
17 business, knowing how to place value on
18 different types of programming, correct?

19 A. Yes.

20 MR. OLANIRAN: I don't have an
21 objection this time. I just wondered if Mr.
22 Horowitz could move a little bit closer to the
23 microphone so we could hear him.

24 JUDGE BARNETT: Thank you.

25 MR. GARRETT: I'll tell you what he

1 said.

2 MR. OLANIRAN: That's what I was
3 afraid of.

4 (Laughter.)

5 MR. GARRETT: Your Honor, I don't want
6 to impose on timing here, but if you want to
7 take a lunch break, this is fine now or I will
8 keep going ahead, too.

9 JUDGE BARNETT: How much more do you
10 have?

11 MR. GARRETT: Probably an hour.

12 JUDGE BARNETT: In that case, why
13 don't we -- is this good? I take it this is a
14 good place to take a break?

15 MR. GARRETT: Otherwise I would be
16 fumbling through my papers here, Your Honor.

17 JUDGE BARNETT: We don't want to watch
18 the fumbling.

19 JUDGE STRICKLER: You can fumble after
20 lunch.

21 MR. GARRETT: Hopefully that won't
22 happen. I will have it all in order by then.

23 JUDGE BARNETT: We will reconvene at
24 12:55.

25 (Whereupon, at 11:56 a.m., a lunch recess was

1 taken.)
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1 AFTERNOON SESSION

2 (1:00 p.m.)

3 JUDGE BARNETT: Please be seated.

4 Mr. Garrett?

5 MR. GARRETT: Thank you, ma'am.

6 JUDGE BARNETT: You may now fumble
7 through your papers.

8 MR. GARRETT: I am done fumbling, and
9 I think I reduced my time estimate here. It's
10 good news.

11 BY MR. GARRETT:

12 Q. Good afternoon, Mr. Horowitz.

13 A. Good afternoon.

14 Q. Before we broke, we were talking about
15 the selection of particular examples. Do you
16 recall that?

17 A. Yes.

18 Q. And as I understand it, just to recap
19 here, it was the MPAA who provided you with the
20 examples for each of the different program
21 categories in your survey, correct?

22 A. Yes.

23 Q. And that fact is not in your report
24 any place, is it?

25 A. I'm sorry?

1 Q. The fact that the MPAA provided you
2 with the examples for the survey is not
3 something you mention in your report?

4 A. I'm taking your word for it. Is there
5 a reference to it somewhere in a page maybe?

6 Q. No, I couldn't find it. I was
7 wondering if I missed something.

8 A. Yeah, I don't -- I don't particularly
9 recall making that statement.

10 Q. Okay. And the examples that they
11 provided you pretty much accepted that they
12 were representative of programming categories?

13 A. Yes.

14 Q. And how exactly did you receive these
15 examples? Did you receive them in e-mail form
16 or did they give them to you over the
17 telephone? Do you recall?

18 A. I don't recall the form. It would not
19 have been verbal, I don't think.

20 Q. You think there is some document that
21 would have embodied the particular examples
22 that they provided you; is that correct?

23 A. That might exist somewhere, yes.

24 Q. Okay. And let me -- Geoff, can you
25 just bring up that February 17th, 2017 letter.

1 I'll represent to you, Mr. Horowitz,
2 this is a letter from your counsel to us
3 dealing with some -- various discovery
4 requests.

5 And, Geoff, if you go down to page 16.

6 We had asked for all documents that
7 were related to the different examples that
8 were included in the surveys.

9 JUDGE STRICKLER: Is that Number 3 on
10 the --

11 MR. GARRETT: It's Number 3 and Number
12 4.

13 JUDGE STRICKLER: Thank you.

14 BY MR. GARRETT:

15 Q. And the response is "Mr. Horowitz
16 relied on his professional knowledge and
17 experience in forming this statement, and did
18 not rely on or consider any documents."

19 Do you see that?

20 A. Yes.

21 Q. Did you consider any documents or rely
22 on documents from the MPAA in deciding the
23 examples to be produced?

24 A. In formulating the questionnaire?

25 Q. The examples to be produced or to be

1 included in the questionnaire.

2 A. I personally don't recall handling any
3 documents.

4 Q. How did you receive the examples?

5 A. I don't know if I received them.

6 Q. Well, they are in your survey, right?

7 A. They are.

8 Q. And you got them from the MPAA?

9 A. Yes.

10 Q. And you can't recall whether you got
11 them orally or via e-mail or via --

12 A. Or if I personally -- of if I
13 personally got them at all.

14 Q. Well, who would have gotten them?

15 A. Someone on my staff.

16 Q. And you don't know what they received?

17 A. No.

18 Q. Okay. Now we can take that down.

19 Now, you also talked this morning
20 about instructions that had been given to the
21 interviewers -- well, let me go back a second.

22 You talk about one of the advantages
23 of your survey was that a single individual
24 would respond for multiple systems, correct?

25 A. A single individual would respond for

1 multiple systems they were responsible for,
2 correct.

3 Q. And so we're clear on this, if you had
4 one person who responded for, I guess, as many
5 as 60 different systems, does that sound right?

6 A. Could there have been a person? There
7 could be, yes.

8 Q. And as I understand it, if those 60
9 systems, 30 carried the same signal, they would
10 only be asked or administered the survey once,
11 correct, for all 30 systems?

12 A. Yes.

13 Q. And were they, respondents, asked to
14 give separate evaluations for each of the
15 systems?

16 A. No.

17 Q. You would identify for that respondent
18 the 30 systems for which they were responding,
19 correct?

20 A. They were only identified one system.

21 Q. And they were not told the identity of
22 the other 29 systems?

23 A. That's correct.

24 Q. So if -- and then whatever response
25 that they gave, you would then apply across all

1 30 systems, correct?

2 A. Yes.

3 Q. Is it possible that that respondent
4 would have responded differently had they been
5 asked about each of those systems individually?

6 A. Possibly.

7 Q. Well, assume, for example, you have a
8 respondent who's carrying only WGNA. Got it so
9 far?

10 A. Assuming only WGNA, yes.

11 Q. Carrying only WGNA. Do you think a
12 respondent would answer differently for a
13 system, say, in Iowa versus Southern
14 California?

15 A. Probably not.

16 Q. And why is that?

17 A. Because, generally speaking, they
18 would value these things the same when they --

19 Q. There would be no regional
20 differentiation?

21 A. Not necessarily be any regional
22 differentiation.

23 Q. The local news on WGNA would be
24 equally important in Southern California as it
25 would be in, say, down state Illinois?

1 A. I don't know if there would be a
2 difference or not.

3 Q. Okay. But the respondents were not
4 told that they were giving values for all 30
5 systems in my hypothetical here, were they?

6 A. You know, I don't know if they were
7 told that.

8 Q. You're not certain what they were
9 instructed?

10 A. I'm not sure what they were instructed
11 as far as -- what they were told, not
12 instructed.

13 Q. Well, did you -- you said that any
14 kind of instructions might have been included
15 in some documents at the field house, correct?

16 A. Yes.

17 Q. What is the field house, exactly?

18 A. What is the field house? It's a
19 company called GMRS, Global Market Research
20 Services.

21 Q. And did you provide GMRS with any
22 instructions on how to administer the survey
23 here?

24 A. We did.

25 Q. Did you provide them with instructions

1 that would say that in case of this respondent
2 answering for multiple systems, that they
3 should or should not be told the identities of
4 the systems for which they were responding?

5 A. They -- they might have been given
6 instructions about what -- you know, what to do
7 with -- with -- when they had multiple systems.

8 Q. Well, just so I am clear, the question
9 is whether or not you provided your field house
10 here with instructions about how to handle the
11 situation where one individual was going to be
12 making determinations about 30 odd systems?

13 A. In a general sense, I know they were
14 told to do one interview.

15 Q. Okay. And were these instructions in
16 writing?

17 A. I don't know.

18 Q. Okay. And in the case of the one
19 respondent answering on behalf of 30 systems,
20 do you identify any of the systems for which
21 they were responding?

22 A. The system in question on the survey.

23 Q. Right, but they were answering for 30
24 different systems, right?

25 A. Yes.

1 Q. Right?

2 A. Yes.

3 Q. And you selected one of the 30; is
4 that right?

5 A. Selected one of the 30.

6 Q. And then whatever responses they gave,
7 you used for all 30?

8 A. Yes.

9 Q. All right. Let me switch here to a
10 discussion you had this morning about the
11 warm-up questions.

12 Do you recall that?

13 A. Yes.

14 Q. And if I could ask you to turn to your
15 written direct testimony. And we'll go to
16 Appendix A and just use the questionnaire that
17 you have there.

18 A. Did you say page 30?

19 Q. No, Appendix A.

20 A. Oh, Appendix A. Is there a page
21 number?

22 Q. Well, it begins on page 23. But let's
23 go to page 25 and Question 4 of that survey.

24 A. I'm sorry, I did not follow where
25 you're sending me.

1 Q. We're going to go to page 25.
2 A. 25.
3 Q. Of your testimony.
4 A. Yes.
5 Q. Exhibit 6012. Go to Question 4, one
6 of your warm-up questions.
7 A. Um-hum.
8 Q. So this is the question you asked
9 them, whether they featured in their
10 advertising and promotion any of the particular
11 program categories.
12 Do you see that?
13 A. Yes.
14 Q. And that's essentially the same
15 question that the Bortz folks had asked in the
16 2004-'05 survey, correct?
17 A. Yes.
18 Q. But they changed it for 2010 through
19 2013, correct?
20 A. Yes.
21 Q. And do you know why they changed it?
22 A. I don't know why they dropped that,
23 those --
24 Q. All right. Well --
25 A. They dropped it.

1 Q. Yeah. Well, I'll just represent to
2 you it's because of questions that were raised
3 by the Judges in the '04-'05 proceeding as to
4 the usefulness of the data.

5 Let me just ask you to turn to page 18
6 of your testimony. This is where you report
7 the results of that Question 2. Do you see
8 that? I'm sorry, Question 4.

9 A. Yes.

10 Q. Right?

11 A. Um-hum.

12 Q. That's yes?

13 A. Question -- page 18?

14 Q. Yes.

15 A. Results, Question 4, yes.

16 Q. All right. And so am I reading this
17 right that in the year 2010, on the right, that
18 92 percent of the respondents said that they
19 did not feature any of the program categories
20 on distant signals?

21 A. Yes.

22 Q. And the comparable number in 2011 was
23 65 percent, correct?

24 A. Yes.

25 Q. And 2012, 93 percent?

1 A. Yes.

2 Q. And 97 percent in 2013?

3 A. Yes.

4 Q. So -- and these results were similar
5 to the results that the Bortz folks are getting
6 in the 2004-'05 survey, correct?

7 A. I don't recall the results of that
8 survey.

9 Q. Now, we also discussed or you also
10 discussed this morning the change that the
11 Bortz folks made in the constant sum question..
12 Do you recall that?

13 A. Yes.

14 Q. And in '04-'05, they talked about the
15 value to the cable system in terms of
16 attracting and retaining subscribers, correct?

17 A. Yes.

18 Q. And they dropped that in the 2010
19 through '13, correct?

20 A. Yes.

21 Q. Do you understand why they dropped it
22 in 2010 through '13?

23 A. There was some -- some testimony that
24 they wanted to broaden the category of --
25 broaden the definition of value.

1 Q. All right. So if we could turn,
2 Geoff, to the 2004-'05 decision, which is
3 Exhibit 6033.

4 JUDGE BARNETT: Mr. Olaniran?

5 MR. OLANIRAN: Your Honor, I don't
6 think that exhibit has been admitted yet.

7 JUDGE BARNETT: Is it being offered?

8 MR. GARRETT: I was not aware that it
9 hadn't been admitted. I'm not going to offer
10 it, but it is the decision of the Judges in the
11 '04-'05 case. I think regardless of whether
12 it's in evidence or not, it's something that
13 can fairly be referred to here, Your Honor.

14 JUDGE BARNETT: We can take official
15 notice.

16 MR. OLANIRAN: Thank you.

17 BY MR. GARRETT:

18 Q. Geoff, if you go up to page 57065.

19 Do you have that before you there,
20 Mr. Horowitz?

21 A. Yes, I do.

22 Q. All right. If you go down at the
23 bottom right-hand corner there, there's a
24 paragraph beginning "yet." Do you see that?

25 And then we continue over to the next

1 -- well, let's just go to the next page, Geoff.

2 Actually, let's go back to the one you
3 just had. So you see they're talking about the
4 Bortz decision to define the key relative value
5 question in terms of attracting and retaining
6 subscribers? Do you see that? It's
7 highlighted on the screen.

8 A. Yeah, okay, on the screen, yes.

9 Q. And then now we'll go over to the next
10 page. And there's a discussion that continues
11 for a couple of columns, but let me just ask
12 you to hone in on the middle column, right
13 above the footnote beginning "in short."

14 A. Okay.

15 Q. It said, "The preferences expressed by
16 cable system operators who answer the Bortz
17 survey, where the key relative value question
18 is limited to defining worth only in terms of
19 attracting and retaining subscribers, either
20 may implicitly reflect more than an actual
21 underlying subscriber demand for the
22 programming that appears on a particular
23 distant signal station or, alternatively,
24 unrealistically minimize factors such as
25 whether the input in question is more

1 attractive than a cable network alternative in
2 terms of the net revenue or profit maximization
3 goals of the buyers."

4 Do you see that?

5 A. I do.

6 Q. Do you understand that the reason that
7 the Bortz folks changed the survey was to help
8 respond to that particular concern of the
9 Judges in the '04-'05 case?

10 A. My immediate reading of this is that
11 it conforms to what I had thought was the
12 notion to broaden the concept of what's
13 included under value.

14 Q. Okay.

15 A. That's how I read this.

16 Q. And also just -- and so they
17 eliminated the reference, specific references
18 to subscriber attraction and retention,
19 correct?

20 A. They eliminated that from their entire
21 survey.

22 Q. And if we go to your key question,
23 Number 6 -- if we can go to your -- go to page
24 36 of your testimony.

25 A. I see page 36.

1 Q. All right. And this is the constant
2 sum question here in the middle?

3 A. Yes.

4 Q. And you see if we go down about five
5 paragraphs, it says "in formulating your
6 percentage"? Do you see that?

7 A. Yes.

8 Q. It says, "Please think about all the
9 factors we have been discussing, including
10 using this programming in your advertising and
11 promotions in 2010 to '13 to attract and retain
12 subscribers."

13 Do you see that?

14 A. Yes.

15 Q. All right. So that's -- I mean, that
16 factor that you included in there, that's the
17 one that kind of relates to the promotion
18 question where somewhere between 60 and
19 97 percent of the respondents say that they
20 don't feature?

21 A. Yes.

22 Q. Okay. And then you say the importance
23 of this programming to you and your
24 subscribers; do you see that?

25 A. Yes.

1 Q. And that's essentially the concept
2 that the Bortz folks had in the constant sum
3 question in 2004-'05, correct?

4 A. Yes.

5 Q. And that's the one that the Judges had
6 concern about, correct?

7 A. About its limitation to that.

8 Q. Yeah. Correct?

9 A. Yes.

10 Q. And then you say "and any other
11 consideration that you may have."

12 A. Yes.

13 Q. And the difference between this
14 formulation of the constant sum question and
15 the Bortz formulation is that Bortz was just
16 basically left it open-ended, that it did not
17 try to limit the respondents to thinking about
18 attraction and retention of subscribers?

19 A. It did not provide any information to
20 the...

21 Q. Okay. Let me ask you to turn to
22 Exhibit 1141, which is the -- a spreadsheet.
23 Oh, I'm sorry, you won't find it there. We're
24 only going to be able to put -- this is a
25 rather thick spreadsheet here.

1 JUDGE BARNETT: And I believe this
2 is --

3 MR. GARRETT: And it's restricted.

4 JUDGE BARNETT: -- part of that
5 restricted material.

6 MR. GARRETT: Yes.

7 JUDGE BARNETT: We'll mark the record
8 as restricted, and I don't think there is
9 anyone in the room who needs to leave, but
10 we'll close the door.

11 (Whereupon, the trial proceeded in
12 confidential session.)

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1 O P E N S E S S I O N

2 CROSS-EXAMINATION

3 BY MR. COSENTINO:

4 Q. Good afternoon, Mr. Horowitz.

5 A. Good afternoon.

6 Q. My name is Victor Cosentino. I am an
7 attorney for the Canadian Claimants group.

8 I want to start by asking you to take
9 a look at your testimony, Exhibit 6012. And
10 I'm going to direct you to page 3.

11 A. Page --

12 Q. 3.

13 A. Yes.

14 Q. Okay. Now, let's see here. There's a
15 sentence here I want you to take a look at
16 where in this second full paragraph you talk
17 about improvements. And then you say,
18 "Notwithstanding these improvements, it is my
19 opinion the Horowitz survey is not a substitute
20 for behavioral data such as viewing."

21 A. Yeah.

22 Q. Is that still your position?

23 A. That is my position.

24 Q. And would your position be the same if
25 that said the Bortz survey?

1 A. Excuse me?

2 Q. Would your position be the same if
3 that said the Bortz survey?

4 A. It would be the same as not a
5 substitute for viewing data.

6 Q. Okay. And is viewing the only kind of
7 behavioral data that you would use, or in your
8 experience is other types of behavioral data
9 better than survey data?

10 A. In this case, it would be viewing.

11 Q. In this case, you would use viewing?

12 A. Yeah.

13 Q. But in your experience in other areas,
14 do you generally use behavioral data or survey
15 data when both are available?

16 A. Well, we use survey data. That's what
17 we generate. Our clients often have behavioral
18 data, whether it's purchase behavior, viewing
19 behavior, reading behavior, or -- to match up
20 with our surveys to formulate their own
21 marketing operations, program development
22 decisions.

23 Q. Okay. But in the research area, is
24 there a preference for behavioral data over
25 survey data?

1 A. There would be a hierarchy of -- in a
2 general sense, of behavioral data versus survey
3 data. Survey data might be used to understand
4 why the behavioral data, but not to -- not to
5 change what the behavioral data is indicating.

6 Q. Okay.

7 A. Often we're asked to do a survey --
8 we're finding this behavioral data; can you do
9 a survey so we can find out from consumers or
10 viewers why it is that they're doing this
11 behavior?

12 Q. All right. Now, I want to dig a
13 little into your survey. As I understood it,
14 reviewing your survey -- your report, there's
15 actually the sample of 300 systems, right, but
16 you actually surveyed a much larger group of
17 people, right?

18 A. Yes.

19 Q. Okay. And if we look at your
20 testimony on page 12, this table, Table 1.1,
21 shows information about how many respondents
22 you had from each sample of 300, correct?

23 A. We successfully -- how many systems we
24 successfully covered from a sample of 300.

25 Q. Okay. But, again, there were more --

1 there were more respondents to your survey than
2 those who appear in your sample?

3 A. Yes.

4 Q. Okay. And the data reported by
5 Dr. Frankel is just based on your sample,
6 right?

7 A. Yes.

8 Q. Okay. I'm just trying to clarify at
9 this point.

10 A. No, I understand.

11 Q. Okay. Now I want to take a look at
12 Exhibit 1140, which was previously admitted. I
13 don't think it's in front of you there.

14 MR. COSENTINO: And, Your Honor, this
15 exhibit is -- I'm going to use a paper version.
16 It's restricted.

17 JUDGE BARNETT: All right. Are you
18 going to ask about the substance?

19 MR. COSENTINO: I am not going to ask
20 about the substance of it at this point. I
21 just want to show some small pieces of
22 information and get clarification as to what
23 they mean.

24 JUDGE BARNETT: In prior hearings,
25 we've had the ability to turn off the

1 forward-facing monitors and only leave the ones
2 on that are on counsel table or on the bench.
3 I'm not sure if we -- I mean, basically turn
4 off the big monitors. I don't know if we have
5 that ability or not.

6 MR. COSENTINO: Thank you.

7 (Laughter.)

8 JUDGE BARNETT: Thank you. Solved.

9 In that case, we won't close the record or the
10 room, Mr. Cosentino, so long as you do not ask
11 any questions on the record that reveal the
12 confidential nature of the material.

13 MR. COSENTINO: Okay. At this point,
14 I am not going to do that.

15 But could you turn the ELMO on for me?

16 BY MR. COSENTINO:

17 Q. Okay. Let's start with the wide view.

18 Mr. Horowitz, this is a printout of a
19 spreadsheet that you provided, I believe, of
20 results for Bortz.

21 MR. OLANIRAN: We can barely see.

22 MR. COSENTINO: I know. But I'll get
23 to it.

24 MR. GARRETT: Your Honor, we're happy
25 to use our copy that we were using before, if

1 that would help Mr. Cosentino. We can put it
2 up on the screen rather than on the ELMO.

3 JUDGE BARNETT: Is it the same, the
4 same material?

5 MR. GARRETT: It's our exhibit, right?

6 MR. COSENTINO: Yes. I mean, that
7 would be great. Thank you.

8 MR. GARRETT: Geoff, can you do that
9 for us?

10 MR. COSENTINO: And, Geoff, this is
11 Exhibit 1140. Great. That's exactly where I
12 want to be.

13 BY MR. COSENTINO:

14 Q. Mr. Horowitz, the first question I
15 have for you is this code star in the upper
16 left-hand corner, can you explain what that
17 means?

18 A. No.

19 Q. Okay. Then -- but you do note that
20 underneath it, each of these rows has a number
21 associated with it, correct?

22 A. Each of these rows has a number in the
23 column A.

24 Q. Correct, thank you.

25 And, Geoff, could you go all the way

1 down to the bottom of this?

2 JUDGE FEDER: Could we just first
3 identify what this is?

4 BY MR. COSENTINO:

5 Q. I'm sorry, this is Exhibit 1140. It's
6 the 2013 survey data from Horowitz.

7 JUDGE FEDER: So these are the results
8 of the data?

9 MR. COSENTINO: Yes, which has
10 previously been admitted.

11 JUDGE FEDER: Thank you.

12 BY MR. COSENTINO:

13 Q. All right. And stop there.

14 A. Okay.

15 Q. Take a look at these codes and tell
16 me, if you now understand what it means, if you
17 can explain it to us.

18 A. Yes.

19 Q. Okay.

20 A. It's a code for which part of the
21 sample that data is from. That data is from
22 the 300 sub-sample and was -- Number 1, and was
23 completed. And these are reported in my
24 testimony.

25 Q. Okay.

1 A. Subset 2 is from the 300 sub-sample
2 and not completed, that was shown on the sample
3 disposition as not having been completed or
4 interviewed.

5 3 is interviews from systems that are
6 not in the 300 interviews -- 300 system sample
7 and completed. We collected that data.

8 And 4 is the same, not from the 300
9 interview sub-sample but we did not -- and we
10 did not complete those surveys.

11 Q. Okay. The last line item here of 799,
12 let's call it about 800, there are about 800
13 systems listed here. Your sample was designed
14 based on however many were in the population,
15 correct?

16 A. Yes.

17 Q. Okay. And, Geoff, you can take this
18 down. And can you give me back the control
19 here? Thank you.

20 So of those 800 systems in 2013, 200
21 were used in your results, correct?

22 A. Yes.

23 Q. Okay. And is 200 an adequate number
24 out of 800 to get valid and reliable results?

25 A. It's 200 out of 300.

1 Q. Well, okay. Is 200 out of 300
2 reliable?

3 A. That's a good response rate.

4 Q. Okay. Would 50 out of 200 be reliable
5 and valid?

6 A. We'd have to have a discussion about
7 valid and reliable.

8 Q. Okay.

9 A. If we talk to 50 executives about
10 their decisions as a business or a government
11 or entity, we could discuss whether, boy, we'd
12 like to rely on these data. It's 50 experts.
13 It was only a small number. Do the other 250
14 have a different opinion? We'd have to
15 consider all those factors before deciding that
16 we wanted to rely on, a la the word
17 "reliable," or consider the results valid.

18 Q. Okay. So as the number you
19 interviewed out of your whole sample decreases,
20 this becomes a bigger concern for you?

21 A. It becomes a concern.

22 Q. Okay. What about 10 out of 300?

23 A. Ten out of 300? We'd consider that
24 qualitative information.

25 Q. You would consider it --

1 A. In a focus group, saying, well, focus
2 group of these 10, we wonder what the rest of
3 the universe is like. And we might be tempted
4 to do further research or decide that we may
5 already know what -- so 10 is a qualitative.

6 Q. Okay. But it's not a quantitative
7 analysis?

8 A. Right, correct.

9 Q. Okay. And would you do those 10 still
10 in a survey telephone interview format?

11 A. Excuse me?

12 Q. You would do those 10 in a survey
13 interview format?

14 A. We would --

15 Q. That's what you did here, right?

16 A. In a hypothetical case, that's the
17 question you're asking me; is that correct?

18 Q. Yes.

19 A. If we got 10 out of 300?

20 Q. If you got 10 out of 300?

21 A. Yes, that's how we would relate to
22 those data.

23 Q. Okay. Would you extrapolate those 10,
24 the results of those 10 to the value ascribed
25 by the entire 300?

1 A. No, not with -- unless somebody
2 presented some great case for doing that. I'm
3 not trying to imagine would that would be.

4 Q. Okay. And now do you know how many
5 respondents had Canadian signals in the
6 Horowitz survey?

7 A. No, I don't.

8 Q. Okay. So in 2013, I believe it was 8.
9 And in 2012 and 2011, it was 7.

10 A. Um-hum.

11 Q. And in 2010, it was 1.

12 A. Um-hum.

13 Q. Do you believe that is data that you
14 can rely on for a quantitative market value?

15 A. It is a valid part of the -- of the --
16 from 200 interview sample, not evaluated
17 separately, but evaluated in the context of all
18 the interviews.

19 Q. So you believe that adding in the
20 results from those 7 or 8 or 1 to the results
21 from the 300 gives you valid --

22 A. They're a part of the result of the
23 300.

24 Q. But you only have opinion or
25 information from one person in 2010.

1 A. A small sub-cell of the sample, yes,
2 Canadian-only television. Not an unusual case
3 in survey research.

4 Q. Okay. And yet you still believe it's
5 reliable?

6 A. The overall results of the sample is
7 reliable, yes.

8 Q. Okay. Now, I want to direct you to
9 your testimony again, and this is page 25 and
10 we're in your survey questionnaire.

11 And these are items -- at the bottom
12 here, we're looking at items A, B, and C, which
13 are news and community events, syndicated
14 series, and movies. If we move to the next
15 page, we pick up D, which is sports, and E,
16 which is other supports, and F, which is
17 devotional.

18 A. Um-hum.

19 Q. And G, which is PBS, and H, which is
20 programs broadcast only on Canadian stations.
21 Correct?

22 A. Yes.

23 Q. Now, with regard to category G, which
24 is programs broadcast only on PBS stations, and
25 category H, programs broadcast only on Canadian

1 stations, those require the respondent to
2 answer about all the programming on those
3 signals, correct?

4 A. Yes. Yes, it does.

5 Q. Okay. And the other categories are
6 just a programming type?

7 A. Yes.

8 Q. Okay. Now, this is a question -- this
9 question is something you emulated from Bortz,
10 correct?

11 A. Yes.

12 Q. Okay. If you had designed this
13 question, would you have compared entire
14 signals to programming categories, if you were
15 designing it from scratch?

16 A. Well, let's look at the overall task
17 going back to your reference to -- because I
18 got this from Bortz. This -- these are the
19 categories in front of this tribunal. That's
20 really where the source of --

21 Q. Well, that's not really true, right?
22 In the case of the Canadians, we're not asking
23 for the entire value of the signal. We're only
24 asking for our programming on it, correct?

25 A. In this case, we're asking for -- I

1 believe this is the point you're making, we're
2 asking for the entire value of the -- of the
3 signal.

4 Q. Right. You're asking for the entire
5 value of the signal?

6 A. Yes.

7 Q. But the Canadian Claimants group is
8 asking for the value of Canadian programming on
9 the Canadian signal. Not the Joint Sports
10 programming, not the Program Suppliers
11 programming. And as you discussed earlier
12 today with Mr. Lutzker, not the Settling
13 Devotional Claimant programming.

14 A. Right.

15 Q. But your question asks for an entire
16 signal's worth of content. Do you understand
17 the difference?

18 A. I understand the difference. I'm
19 trying to understand that you're saying that
20 these -- this other content that deserves
21 allocation of value is on your signal. Not --
22 in other words, you have stuff that we're
23 giving allocated value to the Canadian station
24 that belongs to other people. Is that what
25 you're saying?

1 Q. That's what I'm saying.

2 A. It could be. I was not aware of that.

3 Q. Okay.

4 A. Like you said, that this content on
5 your station that belongs to somebody else.

6 Q. So if you were trying to get at the
7 value of Canadian programming only, would you
8 ask it as an entire signal or would you ask it
9 as a category?

10 A. Well, we -- it's sort of a little bit
11 of speculation. We'd have to examine whether
12 -- similar caveats would need to be used as
13 we've used for compensable and not, as far as
14 what the respondents should pay attention to on
15 account of the signal and not pay attention to
16 in allocating value to the content.

17 Q. Okay. You didn't understand that
18 distinction, though, before we talked about it
19 today?

20 A. I didn't understand the -- that
21 there's carriage on Canadian channels that
22 should be credited to somebody -- other
23 category.

24 Q. Okay. This morning you talked about
25 pre-testing and you said that in the case of

1 executives, you didn't feel it was necessary to
2 pretest, correct?

3 A. Yes.

4 Q. Now, that's because you believed that
5 the executives are knowledgeable?

6 A. They are knowledgeable, yes.

7 Q. Okay. But you never actually tested
8 that, correct? I mean, there's no -- there was
9 never actually an empirical test done by
10 Horowitz to determine if these cable system
11 operators understood the question and what --
12 in a way that let us rely on the results,
13 right? You never tested it?

14 A. We did not do a test of that nature.

15 Q. Okay. You didn't test it to determine
16 if there was any ambiguity in the question,
17 correct?

18 A. Correct.

19 Q. You didn't test it to determine what
20 they thought you meant when you talked about a
21 value or shares on a constant sum, correct?

22 A. Correct.

23 Q. Okay. Now I want to look at --
24 earlier today with Mr. Garrett, you were going
25 through some spreadsheets of cable system

1 information. Okay? And one of the ones he
2 looked at with you was -- showed the different
3 signals that were carried by each system.

4 And I want to -- if I took an excerpt
5 of just one of them -- and I want to show it to
6 you. This is an excerpt of Exhibit 1144, which
7 is the data for 2013.

8 And this is a system, you don't know,
9 but we've all talked about before, and it has
10 two types of signals on it. Do you see that?
11 It has KBTC, which, if you go over to station
12 type description, is educational --

13 MR. OLANIRAN: Excuse me, Your Honor.
14 You're right.

15 MR. COSENTINO: Restricted? I'm
16 sorry, Your Honor.

17 JUDGE BARNETT: Okay. This portion of
18 the transcript will be marked as restricted. I
19 don't see anyone in the hearing room who needs
20 to be excluded at this time.

21 (Whereupon, the trial proceeded in
22 confidential session.)

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1 O P E N S E S S I O N

2 JUDGE BARNETT: Mr. Dove?

3 MR. DOVE: No questions, Your Honor.

4 JUDGE BARNETT: Redirect,
5 Mr. Olaniran?

6 REDIRECT EXAMINATION

7 BY MR. OLANIRAN:

8 Q. Good afternoon again, Mr. Horowitz. I
9 have a couple of very quick questions,
10 hopefully.

11 You testified that you thought
12 examples were helpful, did you not?

13 A. Yes.

14 Q. And when you were -- you spoke -- when
15 you were answering some of the questions by
16 Ms. Mace and she referenced the fact that news
17 and community events in your questioning did
18 not have particular examples, do you recall
19 that?

20 A. Yes.

21 Q. And you also testified that you didn't
22 raise that question with MPAA with regard to
23 examples for news and community events. Do you
24 recall that?

25 A. Yes.

1 Q. And from a survey practitioner's
2 perspective, did it matter to your -- to your
3 survey that you didn't have an example for
4 news?

5 A. No.

6 Q. And why is that?

7 A. News is news.

8 Q. What do you mean?

9 A. News is, for example, the news.

10 Q. As in it's self-explanatory; is that
11 what you mean?

12 A. Yeah.

13 JUDGE STRICKLER: How about the other
14 part of that category, community events? Do
15 you think that's also self-explanatory?

16 THE WITNESS: Community events could
17 have used an explanation.

18 JUDGE STRICKLER: Thank you.

19 BY MR. OLANIRAN:

20 Q. Also during your conversation with
21 Ms. Mace, she asked you about certain programs
22 that were mis-categorized on WGN-only systems
23 as Program Suppliers' programs. Do you recall
24 that conversation?

25 A. Yes.

1 Q. Okay. And she asked whether you would
2 allocate to the other sports share in those
3 instances to the Commercial Television
4 category, to the extent the mis-categorized
5 programs were the only programs on WGNA; is
6 that correct? Do you remember that?

7 A. As a reasonable substitute.

8 Q. And I believe you said it would be an
9 estimate, a good estimation, something to that
10 effect. Do you recall that?

11 A. Yes.

12 Q. Okay. And the examples that she
13 showed you were on WGN-only systems. Do you
14 remember that?

15 A. Yes.

16 Q. Okay. And so do you recall
17 Mr. Trautman saying -- stating in his testimony
18 that WGN-only systems constituted about
19 30 percent of the -- of the universe of
20 systems?

21 A. Yes.

22 Q. Okay. So which would mean that
23 70 percent of the other systems carried a
24 complement or different signals, including WGN,
25 correct?

1 A. Yes, possibly including WGN, yes.

2 Q. So now keeping that in mind, if you
3 were looking at -- if you were going to
4 reallocate, to the extent that you will at all
5 reallocate the share that you derived from
6 surveying WGN-only systems, when it constituted
7 only 30 percent of the universe, would you --
8 to the extent you're estimating, would you be
9 estimating the entire share derived for other
10 sports or just some portion thereof?

11 A. As I think I said, only taken from the
12 instances in where the error occurred.

13 Q. Now, in response to some questioning
14 from Mr. Garrett, he asked you -- he gave you a
15 couple of examples where there were what one
16 would call low amounts of volume on WGNA. In
17 one instance, I think it was two hours. In
18 another instance, I think it was 30 minutes.
19 And he asked whether you would have changed
20 your choice of using an other sports category.

21 Do you recall that?

22 A. Yeah.

23 Q. And you said that it would not have.
24 Do you recall that?

25 A. Yes.

1 Q. And why did you say that it wouldn't
2 have?

3 A. It's -- it's -- there's something for
4 our respondents to evaluate as far as whatever
5 is compensable on those.

6 Q. And is that premised on your testimony
7 that respondents are deemed knowledgeable of
8 the content on their systems?

9 A. In this -- in our emulation of the
10 Bortz survey, they are deemed knowledgeable to
11 do the constant sum and evaluate the content
12 that they are buying and evaluating.

13 Q. And did you read in the Bortz survey
14 the extent to which Mr. Trautman said the
15 respondents were knowledgeable about their
16 content?

17 A. I'm sorry, could you repeat the
18 question?

19 Q. I said, did you read Mr. Trautman's
20 testimony?

21 A. Yes.

22 Q. And do you recall Mr. Trautman
23 discussing the extent to how very knowledgeable
24 the respondents are?

25 A. Yes.

1 Q. Thank you very much.

2 MR. OLANIRAN: I have no further
3 questions.

4 JUDGE BARNETT: Thank you,
5 Mr. Olaniran.

6 Mr. Horowitz, thank you very much.

7 THE WITNESS: Thank you.

8 (The witness stood down.)

9 JUDGE BARNETT: Does that conclude the
10 program for today?

11 MS. PLOVNICK: Yes, Your Honor.

12 MR. OLANIRAN: For Program Suppliers,
13 yes.

14 JUDGE BARNETT: Ms. Plovnick?

15 MS. PLOVNICK: Ms. Hamilton will be
16 here on Monday.

17 JUDGE BARNETT: All right. Do we have
18 an estimate of how long her testimony will
19 take?

20 MS. PLOVNICK: I mean, direct won't be
21 that long. But the other parties --

22 JUDGE BARNETT: Okay.

23 MR. GARRETT: Your Honor, we have
24 eight hours left on our time limit.

25 (Laughter.)

1 JUDGE BARNETT: By all means, let's
2 use it.

3 JUDGE STRICKLER: Do we have a witness
4 returning?

5 JUDGE BARNETT: No, I think
6 Ms. Hamilton is the last witness, correct?

7 MR. OLANIRAN: Yes.

8 MS. PLOVNICK: Yes, Your Honor.

9 JUDGE BARNETT: All right, thank you.
10 In that case, we will be at recess
11 until 9:00 o'clock Monday morning. Thank you.

12 (Whereupon, at 2:16 p.m., the trial
13 recessed, to reconvene at 9:00 a.m. on Monday,
14 March 19, 2018.)

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1 C O N T E N T S

2 WITNESS: DIRECT CROSS REDIRECT VOIR DIRE

3 HOWARD HOROWITZ

4 By Mr. Olaniran 4087

5 By Mr. Lutzker 4167

6 By Mr. Garrett 4173

7 By Ms. Mace 4235

8 By Mr. Cosentino 4245

9 By Mr. Olaniran 4267

10

11 CONFIDENTIAL SESSIONS: 4228-4244, 4262-4266

12

13 AFTERNOON SESSION: 4210

14

15 E X H I B I T S

16 EXHIBIT NO: MARKED/RECEIVED REJECTED

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18 1134 4174

19 1135 4174

20 1136 4174

21 1137 4174

22 1138 4174

23 1139 4174

24 1140 4174

25 1141 4174

	EXHIBIT NO:	MARKED/RECEIVED	REJECTED
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CERTIFICATE

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I certify that the foregoing is a true and accurate transcript, to the best of my skill and ability, from my stenographic notes of this proceeding.

3-18-18

Date


Signature of the Court Reporter

OPEN SESSIONS

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